92-2058 (1)

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

* * * *

HAWAIIAN AIRLINES, INC., PETITIONER

v.

GRANT T. NORRIS

and

PAUL J. FINAZZO, HOWARD E. OGDEN and HATSUO HONMA, PETITIONERS

v.

GRANT T. NORRIS

* * * *

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF HAWAII

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Hawaii Supreme Court erred by applying the narrow test for preemption under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, articulated in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), to find that Norris' wrongful discharge tort claims were not preempted by the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, contrary to the plain language and intent of the RLA and the decisions of the United States Courts of Appeals for the Ninth, Fourth and Sixth Circuits holding that the *Lingle* analysis does not apply to RLA preemption.

LIST OF INTERESTED PARTIES

Petitioner Hawaiian Airlines, Inc., a Hawaii corporation, is a wholly-owned subsidiary of HAL, Inc., a publicly traded Hawaii corporation. HAL, Inc. is also the parent corporation of West Maui Airport, Inc.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The decision of the Supreme Court for the State of Hawaii in *Norris v. Finazzo, et al.*, Civil No. 89-2904-09, is reported at ___ Haw. ___, 842 P.2d 634 (Haw. 1992) (Appendix "App." A). The companion decision in *Norris v. Hawaiian Airlines, Inc.*, Civil No. 87-3894-12, is not reported (App. B). The orders of the Circuit Court of the First Circuit, State of Hawaii, which were the subject of the appeal are not reported.

JURISDICTION

The judgments of the Hawaii Supreme Court were entered February 16, 1993 (App. C). The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause, Article VI, clause 2 of the Constitution, provides in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . .

The pertinent sections of the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, are reproduced at App. D. The pertinent provisions of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, are reproduced at App. E.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

On February 2, 1987, Grant T. Norris ("Norris") became employed by Petitioner Hawaiian Airlines, Inc. ("Hawaiian Airlines") as an aircraft mechanic. *Finazzo*, 842 P.2d at 637. The terms and conditions of Norris' employment were governed by a collective bargaining agreement ("CBA") (App. F) negotiated between Hawaiian Airlines and the International Association of Machinists and Aerospace Workers (AFC-CIO) ("IAM" or "the Union") pursuant to the provisions of the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.* (App. D).

On July 15, 1987, Norris was involved in a dispute with his supervisor concerning a tire change on an Hawaiian Airlines' jet aircraft. 842 P.2d at 637. Norris expressed concerns regarding the airworthiness of the "axle sleeve" portion of the tire assembly, but an Hawaiian Airlines' inspector found the axle sleeve to be airworthy and directed that the tire change be completed. *Id.*

Norris' supervisor asked Norris to sign a work record reflecting the tire change, pursuant to Article IV, ¶ D.4(a) of the CBA, which provides in relevant part: "An Aircraft Mechanic may be required to sign work records in connection with the work he performs." Norris refused to sign the record, citing his concern regarding the safety of the axle sleeve, and claiming that he himself had not performed the work in question.[1] (R. I:4) Norris'

[1]Record cites to the record filed in the Hawaii Supreme Court in *Finazzo* and *Hawaiian Airlines* will be ("R." "Volume Number:" "page(s)").

supervisor told him that the supervisor and the inspector had signed a work record regarding the condition of the axle sleeve and that Norris' signature for the tire change was not an endorsement of the condition of the sleeve. Nevertheless, Norris would not change his position. After Norris refused to sign the work record, he was held out of service pending an investigation into his conduct in accordance with the CBA. CBA, Art. XV, ¶ F.1; (R. I:5).

Articles XV and XVI of the CBA set forth detailed procedures for the adjustment of grievances and other employment disputes and establish an arbitral panel, a System Board of Adjustment ("System Board"), for final and binding resolution of claims through arbitration. The CBA provides that the System Board "shall have exclusive jurisdiction over disputes between any employee covered by this Agreement and the Company and between the Company and the Union, growing out of grievances concerning disciplinary action, rules, rates of pay, or working conditions covered by [the CBA] . . . or out of the interpretation or application of any terms of [the CBA] . . . ." CBA, Art. XVI, ¶ C.

The CBA grievance process regarding Norris began on July 15, 1987, when a Step 1 grievance hearing was scheduled for July 31, 1987. 842 P.2d at 637. The grievance proceeding focused on whether Norris' failure to sign the work record provided just cause for disciplinary action against him in light of the CBA's requirement that mechanics sign off for work performed. (R. V:100-105, at ¶¶21-22; V:109-110) Norris took the position that his refusal to complete the requested work record was justified by his questions about the safety of the axle sleeve. Article XVII ¶ F of the CBA provides that "[a]n employee's refusal to perform work which is in violation of established health and safety rules, or any local, state or federal health and safety law shall not warrant disciplinary action."

Norris had an opportunity to present his argument at the Step 1 grievance hearing on July 31, 1987. Norris was present and represented at the hearing by his union representative. (R. V:100-105, at ¶¶ 21-22; V:109-110) On August 3, 1987, the hearing officer issued a Step 1 report finding Norris guilty of insubordination and recommending his termination. (Decision of Step 1 hearing officer, Aug. 3, 1987 (App. G))

At some time between July 15 and August 3, 1987, Norris

contacted the Federal Aviation Authority ("FAA") and reported that the axle sleeve he had observed was not airworthy. (R. XVII: Deposition of Grant Norris, Vol. 4, Feb. 10, 1990, at 709-10) On August 4, 1987, after the Step 1 determination had been made, the FAA contacted Hawaiian Airlines, inspected the axle sleeve and had it removed from the aircraft.

Pursuant to the CBA, Norris, through the IAM, filed an appeal to the Step 3 grievance level regarding the Step 1 determination. (R. I:8, at ¶ 36; V:134) Prior to the Step 3 hearing, Hawaiian Airlines reduced Norris' punishment from a termination to a suspension without pay for the period from August 3, 1987 to September 15, 1987, and ordered him reinstated effective that latter date. (Ltr. of Reinstatement, Sept. 10, 1987 (App. H))

Norris did not return to work on September 15, 1987, and he took no further steps to pursue his grievance through the System Board procedures mandated by the CBA. Instead, he abandoned the grievance process and several months later commenced litigation in state court. On March 2, 1988, three months after Norris filed suit, the FAA notified Hawaiian Airlines of a proposed civil penalty concerning the axle sleeve. In April 1990, the FAA settled all pending cases involving Hawaiian Airlines – including the axle sleeve matter – without making any findings of fact or conclusions of law.

B. *NORRIS v. HAWAIIAN AIRLINES, INC.*, CIV. NO. 87-3894-12

Norris filed suit against Hawaiian Airlines in the First Circuit Court for the State of Hawaii on December 8, 1987, alleging termination in violation of public policy (Count I), violation of the Hawaii Whistleblowers' Protection Act, H.R.S. § 378-61 *et seq.* (Count II), intentional infliction of emotional distress (Count III), punitive damages (Count IV), and breach of the CBA (Count V). Count I specifically alleged that Norris was terminated in violation of public policies embodied within the Federal Aviation Act, 49 U.S.C. § 1301 *et seq.*, and the Federal Aviation Regulations (collectively "the Federal Aviation laws") due to his refusal to complete work records regarding the tire change.

Hawaiian Airlines removed the case to the United States District Court for the District of Hawaii on January 6, 1988, pursuant to the "complete preemption" doctrine. Thereafter, Hawaiian Airlines moved to dismiss the complaint in its entirety on the

grounds that Norris' claims were subject to the mandatory arbitration procedures of the RLA. The Federal District Court dismissed Count V of the complaint for breach of the CBA as "completely preempted," but remanded the remaining Counts, reasoning that the state court was competent to determine the issue of whether Hawaiian Airlines had a valid "preemption" defense based on the RLA.

In state court, Hawaiian Airlines filed a motion to dismiss for lack of subject matter jurisdiction due to RLA preemption. The circuit court dismissed Count I (termination in violation of public policy), finding that claim to be cognizable under the CBA arbitration procedure and therefore preempted by the RLA.

C. *NORRIS v. FINAZZO, ET AL.*, CIVIL NO. 89-2904-09

On September 20, 1989, Norris filed a second suit against three Hawaiian Airlines' supervisory employees—Paul J. Finazzo, Howard E. Ogden and Hatsuo Honma ("the Individual Defendants"). Norris' claims against the Individual Defendants were for termination in violation of the public policies embodied in the Federal Aviation laws (Count I), termination in violation of the public policies embodied in the Hawaii Whistleblowers' Protection Act (Count II), intentional infliction of emotional distress (Count III), and punitive damages (Count IV). The suit against the Individual Defendants was consolidated with the *Hawaiian Airlines* suit.

The Individual Defendants moved to dismiss Counts I and II of the *Finazzo* complaint on grounds that those claims were preempted by the RLA. The state circuit court agreed and dismissed those counts. The circuit court certified the orders of partial dismissal in *Hawaiian Airlines* and *Finazzo*, as well as the order denying Norris' motions for reconsideration thereof, for immediate appeal pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure.[2]

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[2]After Norris' appeal was fully briefed, the Hawaii Supreme Court dismissed the *Hawaiian Airlines* action *sua sponte* because the record on appeal did not contain a certified copy of the order of remand from the Federal District Court. The remand order was eventually reissued and certified, and the record of prior proceedings in the case, including the dismissal of Count I of the *Hawaiian Airlines* complaint, was ordered reinstated. The Rule 54(b) appeal of Count I then proceeded, and the parties once again briefed the preemption issues in the *Hawaiian Airlines* case.

D. DECISION OF THE HAWAII SUPREME COURT

In judgments entered February 16, 1993, the Hawaii Supreme Court reversed the dismissal of Count I of the *Hawaiian Airlines* complaint and Counts I and II of the *Finazzo* complaint. The court held, as a matter of federal law, that Norris' tort claims for wrongful discharge were not preempted under the RLA and should not have been dismissed. *Norris v. Finazzo*, __ Haw. __, 842 P.2d 634 (Haw. 1992).[3]

The Hawaii Supreme Court acknowledged that the determination of whether the RLA preempts state law claims is a question of congressional intent. 842 P.2d at 639. The court also recognized that the RLA was enacted to promote stability in railroad and airline industry labor-management relations by providing a comprehensive non-judicial framework for resolving employment disputes. *Id* at 640. The court nevertheless decided that congressional intent would not be frustrated by allowing Norris' claims for wrongful discharge to go forward in state court outside the RLA arbitration process. 842 P.2d at 648.

In rejecting the RLA preemption defense, the Hawaii Supreme Court applied a preemption test derived from Section 301 of the Labor Management Relations Act ("Section 301"), 29 U.S.C. § 185, as explicated in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), and *Maher v. New Jersey Transit Rail Operations, Inc.*, 593 A.2d 750 (N.J. 1991). The *Lingle* case held that Section 301 preempts only those state law claims in which "the application [of state law] requires the interpretation of a collective bargaining agreement." 486 U.S. at 407. In *Maher*, the New Jersey Supreme Court extended the holding of *Lingle* to govern RLA preemption. 593 A.2d at 758. The Hawaii court concluded that, under the *Lingle* standard, Norris' claims were not preempted since resolving those claims, in the court's view, does not require any interpretation of the CBA. 842 P.2d at 645.

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[3]The decision in *Finazzo* was issued December 16, 1992. In a subsequent memorandum opinion issued February 2, 1993 in the *Hawaiian Airlines* case, the Hawaii court adopted its reasoning and holding in *Finazzo* to find that Norris' claim for wrongful discharge against Hawaiian Airlines was not preempted. Since the *Hawaiian Airlines*' decision simply adopted the *Finazzo* reasoning and holding by reference, Petitioners will refer to the decision in *Norris v. Finazzo* in their discussion of the court's actions and in their arguments as to why certiorari should be granted.

Despite extensive briefing by both parties of the Ninth Circuit's decision in *Grote v. Trans World Airlines, Inc.*, 905 F.2d 1307 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990) (*"Grote"*), which found RLA preemption on facts similar to those in *Norris*, the Hawaii Supreme Court did not cite or follow *Grote* or the Ninth Circuit's other decisions regarding RLA preemption. In *Grote*, the Ninth Circuit held that the test articulated by the Supreme Court in *Lingle* for preemption under Section 301 did not apply to RLA preemption since Congress intended for the RLA to have broader preemptive power. 905 F.2d at 1309-10. Unconstrained by *Lingle*, *Grote* held the RLA would preempt any state law claim "arguably governed" by a collective bargaining agreement "where the gravamen of the complaint is wrongful discharge." 905 F.2d at 1309. The Hawaii Supreme Court also failed to discuss other cases from the Fourth, Sixth and Ninth Circuits finding that the *Lingle* analysis does not apply to RLA preemption issues. *See Lorenz v. CSX Trans., Inc.*, 980 F.2d 263 (4th Cir. 1992); *Smolarek v. Chrysler Corp.*, 879 F.2d 1326, 1334 n.4 (6th Cir. 1989) (discussing *McCall v. Chesapeake & Ohio Ry.*, 844 F.2d 294 (6th Cir.), *cert. denied*, 488 U.S. 879 (1988)); *Hubbard v. United Airlines, Inc.*, 927 F.2d 1094, 1097 (9th Cir. 1991). *But see Davies v. American Airlines, Inc.*, 971 F.2d 463 (10th Cir. 1992) (*Lingle* analysis does apply to RLA preemption), *petition for certiorari filed*, 61 U.S.L.W. 3481 (1993).

Hawaiian Airlines and the Individual Defendants now respectfully petition this Court for a writ of certiorari to the Hawaii Supreme Court. As set forth more fully below, Petitioners believe review of the Hawaii court's decision presents an appropriate opportunity for exercise of this Court's certiorari jurisdiction since review would effectuate the clear mandate by Congress in the RLA that employment disputes such as those raised by Norris be resolved through arbitration; would resolve a split between the United States Court of Appeals for the Tenth Circuit and the Courts of Appeals for the Fourth, Sixth, and Ninth Circuits regarding the standard for determining RLA preemption; would resolve an intra-circuit split between the Hawaii Supreme Court and the Ninth Circuit regarding the RLA preemption standard; and would provide much needed guidance and uniformity regarding the preemption standard to be applied to employment disputes in the vital interstate railroad and airline industries governed by the RLA.

REASONS FOR GRANTING THE PETITION

I. *NORRIS* IS IN CONFLICT WITH THE EXPLICIT LANGUAGE OF THE RLA AND THE DECISIONS OF THREE UNITED STATES COURTS OF APPEALS BECAUSE IT WRONGLY APPLIES *LINGLE* TO DETERMINE THE SCOPE OF PREEMPTION UNDER THE RLA.

In *Norris*, the Hawaii Supreme Court was called upon to determine whether an employee can assert state tort "wrongful discharge" claims in state court when the dispute underlying those claims arises out of an application of the terms of the CBA and the grievance process itself and when the CBA explicitly grants to the System Board "exclusive jurisdiction over disputes between any employee covered by [the CBA] and the Company . . . growing out of grievances concerning disciplinary action, rules, rates of pay or working conditions covered by [the CBA] **or** out of the interpretation **or** application of any terms of [the CBA]." CBA Article XVI, ¶ C (emphasis supplied). The state circuit court had found Norris' wrongful discharge claims preempted by the RLA. By applying the holding from *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), to revive Norris' state law claims, the Hawaii Supreme Court ignored clear congressional intent, misapplied this Court's precedent in the preemption area, and put itself in square conflict with the decisions of three federal courts of appeals. Those three courts have held, based on their analysis of the provisions of the RLA, its legislative history and this Court's decisions, that the *Lingle* test is inapplicable to preemption under the RLA.

The *Lingle* test was developed by this Court to address preemption under Section 301. *Lingle*, 486 U.S. at 401. Section 301 provides that suits for breach of collective bargaining agreements may be brought in federal court. 29 U.S.C. § 185. Nothing in the text of Section 301 or its legislative history requires or even mentions arbitration as a mandatory forum for resolving workplace disputes. *Id.* In fact, this Court recently held that an employee was entitled to sue in federal court under Section 301 where his collective bargaining agreement was silent and did not specifically limit resolution of disputes to the grievance process. *Groves v. Ring Screw Works*, 498 U.S. 168 (1990).

Section 301 was first found to have preemptive power over

state court actions by this Court in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962). Since the text of Section 301 does not evince a legislative intent to remove labor disputes from the courts or to commit them to an arbitral forum, it is clear that Section 301 preemption is a matter of "judicial imposition" rather than statutory creation. *Grote*, 905 F.2d at 1310.

In *Lingle*, this Court outlined the limited scope of Section 301 preemption:

> Even if dispute resolution pursuant to a collective bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is "independent" of the agreement for § 301 pre-emption purposes.

486 U.S. at 410 (footnote omitted). The *Lingle* Court emphasized that its discussion pertained only to Section 301 preemption and that "it is important to remember that other federal labor law principles may pre-empt state law." 486 U.S. 409 at n.8. The *Lingle* test was properly crafted to protect the interests identified by Congress in enacting Section 301—namely, to assure uniformity in the interpretation of collective bargaining agreements. Congress had broader purposes in enacting the RLA—namely, to require arbitration of a broad range of workplace disputes involving not only the interpretation of collective bargaining agreements, but also disputes arising out of the application of terms of those agreements.

Thus, unlike Section 301, which is silent on the issue of arbitration of workplace disputes, the RLA requires airlines with unionized employees to establish an arbitral forum—a System Board of Adjustment—for the resolution of "disputes between an employee . . . and a carrier . . . growing out of grievances ***or*** out of the interpretation ***or*** application of agreements concerning rate of pay, rules, or working conditions." 45 U.S.C. § 184 (emphasis supplied). By use of the disjunctive, Congress plainly expected the System Board to resolve not only employment disputes requiring interpretation of agreements, but also disputes growing out of grievances concerning discipline or out of the application of agreements. Indeed, in Section 2 of the RLA, 45 U.S.C. § 151a, Congress went further and unequivocally stated that the purposes of the RLA included a statutory scheme to

> provide for the prompt and orderly settlement of *all disputes concerning rates of pay, rules or working conditions* (emphasis supplied)

and, in addition,

> to provide for the prompt and orderly settlement of all disputes growing out of grievances **or** out of the interpretation **or** application of agreements covering rates of pay, rules or working conditions. (emphasis supplied).

45 U.S.C. § 151a.

This Court has already held that the arbitral procedures mandated by the RLA cannot be avoided by an employee through characterization of a discharge as a state claim for breach of contract. *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320 (1972). The *Andrews* Court found after review of the text of the RLA and its legislative history that the arbitral procedures mandated by Section 151a of the Act are compulsory. 406 U.S. at 322. The Court reasoned that, since Congress in the RLA clearly intended to direct transportation industry employment disputes into arbitration, the parties could not opt out of arbitration by mutual agreement, and an employee could not avoid arbitration simply by pleading a claim as one arising under state law. *Id.* The Court noted that Section 301 had in certain circumstances been held to require arbitration and that the RLA presented an even stronger case for compulsory arbitration "since the compulsory character of the [RLA] administrative remedy . . . stems not from any contractual undertaking between the parties but from the Act itself . . . ." *Id.* at 323. *Cf. Groves v. Ring Screw Works*, 498 U.S. 168 (1990) (under Section 301 employee could bypass grievance process and file suit in federal court because the parties to the collective bargaining agreement had not contracted to arbitrate all disputes).

Given the mandatory arbitration provisions in the RLA and this Court's pronouncements on the scope of RLA preemption, three federal courts of appeals have held that the formula for Section 301 preemption set forth in *Lingle* is not the proper measure for preemption under the RLA. In accordance with the plain language of Section 2 of the RLA, those courts have held that RLA preemption is not limited to claims requiring an interpretation of CBA provisions, but extends beyond *Lingle* to preempt "all disputes growing out of grievances or out of the interpretation or application" of collective bargaining agreements. 45 U.S.C. § 151a. The Hawaii Supreme Court in *Norris* failed to discuss or distinguish those three courts' decisions, and, as discussed in more detail below, the Hawaii court's decision is clearly in conflict with those courts, including the Ninth Circuit.

In *Grote v. Trans World Airlines, Inc.*, 905 F.2d 1307 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990), the Ninth Circuit specifically rejected an employee's attempt to apply the *Lingle* test to a dispute regarding RLA preemption. The Ninth Circuit held that the scope of preemption under the RLA and Section 301 are not the same. 905 F.2d at 1309. The RLA contains a statutory provision requiring arbitration of employment disputes, and the LMRA does not. *Id.* The Ninth Circuit further found *Lingle* inapposite because the RLA, unlike Section 301, was enacted for the express purpose of keeping employment disputes in the railroad and airline industries "simple and out of reach of the often lengthy court process." *Id.*

Grote's facts are similar to those in *Norris*. In *Grote*, the employee had claimed that he was discharged in retaliation for his refusal to give false medical information to the FAA at his employer's request. 905 F.2d at 1309. The employer asserted his termination was warranted under the collective bargaining agreement because Grote had failed to maintain the requisite medical certification. *Id.* The Ninth Circuit held that Congress intended for the RLA arbitration procedure to preempt state law remedies in all cases where the gravamen of the employee's claim is wrongful discharge and the employer's actions are "arguably justified" by the terms of a collective bargaining agreement. *Id.* Accordingly, Grote's state law claims arising from the alleged wrongful discharge were dismissed. *Id.*

A separate panel of the Ninth Circuit Court of Appeals followed *Grote* to affirm that the *Lingle* standard does not apply to RLA preemption. *Hubbard v. United Airlines, Inc.*, 927 F.2d 1094, 1097 (9th Cir. 1991).

In *Lorenz v. GSX Transportation, Inc.*, 980 F.2d 263 (4th Cir. 1992), the United States Court of Appeals for the Fourth Circuit refused to apply *Lingle's* Section 301 analysis to narrow the scope of RLA preemption because "the [Supreme] Court has clearly recognized that preemption under the RLA is more pervasive." 980

F.2d at 268 (citing *Elgin, Joliet & Eastern R. Co. v. Burley*, 325 U.S. 711 (1945)). The Fourth Circuit cited this Court's decision in *Andrews* as the "starting point for considering the preemptive effect of the RLA," 980 F.2d at 266, and found that *Andrews* and its progeny require preemption of all state tort claims "inextricably intertwined" with a collective bargaining agreement's grievance procedure. *Id.*

The Sixth Circuit Court of Appeals has also concluded that *Lingle* does not apply to RLA preemption analysis. In *McCall v. Chesapeake & Ohio Ry. Co.*, 844 F.2d 294 (6th Cir.), *cert. denied*, 488 U.S. 879 (1988), a case decided prior to *Lingle*, the Sixth Circuit held an employee's claim for violation of Michigan's disability discrimination law was preempted under the RLA due to the "strong similarity between the inquiry made by the arbitration board and the inquiry made by the jury in the state cause of action . . . ." 844 F.2d at 301. The *McCall* Court cited the broad federal policy articulated in the RLA to channel dispute resolution into non-judicial fora and held that, "[i]f the federal dispute resolution mechanism is to have any force, juries cannot be allowed to second-guess the decisions of arbitration boards." *Id.* at 302. On a motion for rehearing filed after *Lingle*, the Sixth Circuit issued a one-paragraph order stating that *Lingle* did not require reversal of its preemption finding. 844 F.2d at 304. In a subsequent decision, the Sixth Circuit cited *McCall* as a case in which *Lingle's* Section 301 preemption did not apply. *Smolarek v. Chrysler Corp.*, 879 F.2d 1326, 1334 n.4 (6th Cir. 1989).

Norris is in clear conflict with the above decisions of the Ninth, Fourth and Sixth Circuit Courts of Appeals because it applies *Lingle's* Section 301 analysis to unduly confine the intended scope of RLA preemption. *Norris* also conflicts in principle with this Court's decision in *Andrews* since it permits Norris to bypass the RLA-mandated arbitral forum by recasting a claim cognizable under the CBA as a breach of state law. The Hawaii court has also wholly disregarded the plain language of the RLA and the CBA, both of which dictate resolution of all such employment disputes exclusively through the RLA's System Board procedures and specifically require arbitration of disputes growing out

of grievances ***or*** the application ***or*** interpretation of the CBA.[4]

Had the Hawaii Supreme Court followed the plain language of the RLA and the United States Courts of Appeals' decisions in *Grote*, *Lorenz* and *McCall*, it clearly would have found Norris' state law claims preempted because those claims arise from an application of the CBA and from the grievance process itself. Furthermore, Norris' state claims involve the same operative facts and issues as his claim for wrongful discharge under the CBA, and the CBA by its unambiguous terms commits all such disputes to the exclusive jurisdiction of the System Board. Norris himself recognized the identity of his state claims and his CBA claims when he drafted his complaint against Hawaiian Airlines to incorporate *all* of the allegations of his state claims (Counts I-IV) within his CBA breach claim (Count V).

Norris' state claims clearly arise out of the application of a number of provisions of the CBA and out of the grievance process itself. When the dispute arose between Norris and his supervisor about his refusal to sign the work record for the tire change, the two disagreed about whether the signature on the work record meant that Norris was signing for the condition of the axle sleeve. Since the CBA provides that "[a]n Aircraft Mechanic may be required to sign work records in connection with the work he performs," Norris' discipline for refusing to sign the work record clearly grew out of an application of the CBA. CBA, Article IV ¶ D.4(a). Since the CBA explicitly commits all employment disputes "growing out of . . . the interpretation or application of any terms of [the CBA]" to the exclusive jurisdiction of the System Board, the CBA by its terms precluded Norris' resort to the state courts. *Cf. Gilmer*, 111 S.Ct. 1647 (1991) (arbitration agreement covered by Federal Arbitration Act by its terms required arbitration of fed-

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[4]Hawaiian Airlines and its mechanic employees, through the IAM, unequivocally adopted the RLA's broad commitment to arbitration in the CBA. Given that fact, the Hawaii Supreme Court's decision also conflicts in principle with this Court's recent decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 111 S.Ct. 1647 (1991), holding an employee may not avoid a contractual agreement covered by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, to submit disputes to arbitration by filing suit under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* The Court noted the liberal federal policy favoring arbitration agreements and held the claimant had not overcome that strong preference by showing Congress intended to provide a mandatory judicial forum under the ADEA.

eral statutory age discrimination claim and precluded resort to courts).

The determination of the propriety of Hawaiian Airlines' actions will also turn on whether the airline is precluded by the CBA from disciplining Norris for refusing to sign the work record based on a concern for public safety. Article XVII ¶ F of the CBA provides: "An employee's refusal to perform work which is in violation of established health and safety rules, or any local, state or federal health and safety law shall not warrant disciplinary action." The CBA also requires just cause for the termination or suspension of an employee. CBA, Article IX ¶ I.5; Article XV, ¶ H.

The Hawaii court conducted its own analysis of Article XVII ¶ F and found that that provision did not protect a mechanic who refused to sign off on work records or who refused to perform work out of safety concerns regarding the airworthiness of an aircraft. 842 P.2d at 634. A System Board with knowledge of the industry practices and working conditions would almost undoubtedly disagree with the court's narrow construction, thereby affording additional substantive protections to covered employees and, by extension, to the flying public. Indeed, an arbitration expert witness testified without contradiction in the record before the Hawaii Supreme Court that the CBA did protect employees who refused to sign work records out of safety concerns and that the CBA was remarkably broad and unusual in its protection of employees who refuse to work out of concern for public safety. (R. XXVII: Deposition of Ted Tsukiyama, Vol. II, Aug. 2, 1990 at 158)

Finally, an essential element of Norris' claims is a "discharge," and proving that will require interpretation *and* application of the CBA *and* of the grievance process itself. In Norris' case, the hearing officer at the Step 1 level recommended Norris' termination, but while the grievance was pending at the Step 3 level, the Step 3 hearing officer reduced the discipline to a suspension. Norris never returned to work or attempted to have his suspension overturned. Instead, several months after his reinstatement, he filed suit in state court claiming he had been discharged.

The nature and classification of the disciplinary action taken against Norris is a matter within the expertise of the System

Board, and it is a matter requiring uniformity of treatment throughout the airline and railroad industries. Certainly that is why Congress committed resolution of such disputes to the RLA arbitral process. *Cf. Mayon v. Southern Pacific Transp. Co.*, 805 F.2d 1250, 1253 (5th Cir. 1986), *cert. denied*, 488 U.S. 925 (1988) (worker who won reinstatement through the RLA grievance proceeding cannot subsequently sue for "wrongful discharge" under state law). Despite this fundamental purpose of the RLA, the Hawaii Supreme Court completely ignored Hawaiian Airlines' argument that the RLA precluded a state court from deciding the nature of Norris' discipline since that determination is part and parcel of the grievance process. If allowed to stand, the court's decision will require a state court jury to interpret the CBA and its application and the CBA's grievance procedure to determine if Norris was discharged; for Norris cannot prevail in his wrongful discharge claims if he was merely suspended.

II. THE HAWAII SUPREME COURT'S ERRONEOUS RULING ON RLA PREEMPTION RAISES ISSUES WORTHY OF CONSIDERATION BY THIS COURT SINCE IT IS ONE OF A NUMBER OF ERRONEOUS RULINGS ON THE SCOPE OF RLA PREEMPTION.

Norris is not the only recent decision applying *Lingle* to narrow the scope of RLA preemption and threaten the speedy and uniform dispute resolution procedure envisioned by Congress. *Cf. Atchison, Topeka & Santa Fe Railway v. Buell*, 480 U.S. 557, 562 (1987) (RLA enacted to promote stability in labor-management relations by promoting a comprehensive framework for resolving disputes).

Maher v. New Jersey Transit Rail Operations, Inc., 125 N.J. 455, 593 A.2d 750 (N.J. 1991), is another state court decision which refused to acknowledge the differences between Section 301 and RLA preemption and applied *Lingle* to determine preemption under the RLA. The New Jersey Supreme Court flatly rejected the premise that the RLA was intended by Congress to have greater preemptive force than the LMRA:

> When a collective-bargaining agreement subject to the [LMRA] establishes a grievance and arbitration remedy, that remedy preempts state-law-based claims by force of section 301. That preemptive effect is no different

> from that granted to the arbitral remedies established by the [RLA].

Id. at 759 (citations omitted). The *Norris* court relied on the quoted passage from *Maher* to find that *Lingle* applied in the RLA context. 842 P.2d at 643. Neither *Norris* nor *Maher* cite or distinguish the numerous federal cases finding *Lingle* inapplicable to RLA preemption.

In another recent case, the United States Court of Appeals for the Tenth Circuit relied on *Lingle* to hold that the RLA preempted only those claims requiring an interpretation of a collective bargaining agreement. *Davies v. American Airlines, Inc.*, 971 F.2d 463 (10th Cir. 1992), *petition for certiorari filed*, 61 U.S.L.W. 3481 (1993). The *Davies* court explicitly disagreed with the Ninth Circuit's reasoning in *Grote*. 971 F.2d at 467 n.5. American Airlines' petition for certiorari in the *Davies* case is currently pending before this Court.

Davies, Maher, and *Norris* ignore the legislative history and plain language of the RLA, as well as the decisions construing it, and instead apply a Section 301 preemption doctrine that unduly limits the congressionally-intended scope of RLA preemption.

With two opposing bodies of RLA preemption case law, transportation industry employees will be encouraged to forum shop among state and federal courts to find the ones which remain open to their artfully pled state law claims. Given the interstate nature of operations of most airline and railroad industry employers, the opportunity for such forum shopping is substantial. The need for uniform employment dispute resolution procedures lies at the heart of the RLA. Petitioners respectfully submit that this Court should review and correct the Hawaii court's analysis in *Norris* to clarify RLA preemption and require employment disputes such as Norris' wrongful discharge claims to be resolved as Congress intended—through arbitration.

CONCLUSION

For the reasons set forth herein, Hawaiian Airlines and the Individual Defendants respectfully request that the writ of certiorari be granted.

Respectfully submitted,

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APPENDICES

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF HAWAII

* * *

GRANT T. NORRIS, Plaintiff-Appellant,
vs. HAWAIIAN AIRLINES, INC., Defendant-Appellee

(CIV. NO. 87-3894-12)

and

GRANT T. NORRIS, Plaintiff-Appellant,
vs. PAUL J. FINAZZO, HOWARD E. OGDEN, HATSUO HONMA, and JOHN DOES 1-50, Defendants-Appellees

(CIV. NO. 89-2904-09)

NO. 15022

APPEALS FROM THE FIRST CIRCUIT COURT

DECEMBER 16, 1992

LUM, C.J., HAYASHI, */ WAKATSUKI **/ AND MOON, JJ., AND INTERMEDIATE COURT OF APPEALS CHIEF JUDGE BURNS, IN PLACE OF PADGETT, J., RECUSED

APPEAL AND ERROR — nature and grounds of appellate jurisdiction — determination of questions of jurisdiction in general. A trial court's dismissal for lack of subject matter jurisdiction is a question of law, reviewable de novo.

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*/ Associate Justice Hayashi, who heard oral argument, retired from the court on March 29, 1992. See HRS 602-10 (1985).

**/ Associate Justice Wakatsuki, who heard oral argument, passed away on September 22, 1992. See HRS 602-10 (1985).

SAME— same — same.

Review of a motion to dismiss for lack of subject matter jurisdiction is based on the contents of the complaint, the allegations of which we accept as true and construe in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can provide no set of facts in support of his claim which would entitle him to relief.

SAME— same — same.

When considering a motion to dismiss pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 12(b) (1), the trial court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction.

SAME— same — same.

Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between federal and state law.

SAME— same — same.

Whether a state law establishing a cause of action is preempted in a given case is a question of congressional intent.

LABOR RELATIONS — labor relations acts — in general.

The Railway Labor Act (RLA), 45 U.S.C. §§151-188 (1988), was enacted, to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes in the railroad industry and was extended to the airline industry pursuant to 45 U.S.C. 184 (1988).

SAME— same — same.

The purposes of the RLA are to provide for, among other things, the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions and the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

SAME— same — same.

Under the RLA, a "major" dispute relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

SAME— mediation, conciliation, and arbitration — application to railroads and other carriers.

Parties involved in major disputes are required to undergo a lengthy process of bargaining and mediation until they have exhausted those procedures. Once this protracted process ends and no agreement has been reached, the parties may resort to the use of economic force.

SAME— labor relations acts — in general.

Under the RLA, a "minor" dispute contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. The claim is to rights accrued, not merely to have new ones created for the future.

SAME— mediation, conciliation, and arbitration — application to railroads and other carriers.

Mandatory arbitration is the exclusive remedy for claims arising from minor disputes.

SAME— labor relations acts — validity — effect of federal legislation.

Where airline employee's claim for retaliatory discharge is not dependent on the interpretation of employee's collective bargaining agreement, employee's claims are not preempted under the RLA.

MASTER AND SERVANT — the relation — termination and discharge— actions for wrongful discharge.

Under the holding of *Parnar v. Americana Hotels, Inc.*, 65 Haw. 370, 652 P.2d 625 (1982), the state tort claim for discharge in violation of public policy is not limited to at-will employees and extends to unionized employees who are not protected by a mandatory grievance/arbitration procedure and just cause standard for termination under their collective bargaining agreement.

ARBITRATION — nature and form of proceeding — nature and right to arbitration in general – arbitration favored public policy.

Although we agree that Hawaii's public policy as reflected by our Arbitration and Award Statute, Hawaii Revised Statutes (HRS) Chapter 658, strongly favors arbitration over litigation, the mere existence of an arbitration agreement does not mean that the parties must submit to an arbitrator disputes which are outside the scope of the arbitration agreement.

LABOR RELATIONS — mediation, conciliation, and arbitration —application to railroads and other carriers.

The arbitral forum must be authorized and competent to resolve the dispute brought before it. Arbitration is a continuation of the collective-bargaining process and the role of the arbitrator is to interpret the labor contract and to apply the agreement to the facts of a dispute. On the other hand, the arbitrator ordinarily cannot consider public interest, and does not determine violations of law or public policy.

SAME -— labor relations act — purpose of acts.

There is no question that the relevant public policy of the Federal Aviation Act and the Federal Aviation Regulations is to protect the public from shoddy repair and maintenance practices in the aviation industry which may endanger the flying public.

SAME— same — same.

Legislative history of the Hawaii Whistleblowers' Protection Act (HWPA), HRS 378-61 through -69 (Supp. 1991), reveals that the legislature intended to safeguard the general public by giving certain protections to individual employees who "blow the whistle" for the public good.

SAME— same — same.

The legislature did not restrict the protections under the HWPA to at-will employees. On the contrary, it left open for the courts to further determine the development of the common law in retaliatory discharge cases.

OPINION OF THE COURT BY MOON, J.

Plaintiff-appellant Grant T. Norris (Norris) appeals from the final judgment of the Circuit Court of the First Circuit, which was certified as final, pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 54(b), and entered in favor of defendants-appellees Paul J. Finazzo, Howard E. Ogden, and Hatsuo Honma (collectively, defendants). Norris had filed suit against defendants alleging discharge from his employment in violation of public policy. The circuit court granted defendants' motion to dismiss counts I and II of Norris' complaint for lack of subject matter jurisdiction on the ground that Norris' claims were preempted by the Railway Labor Act (RLA), 45 U.S.C. § 151-188 (1988). We disagree with the circuit court's determination and hold that the RLA does not preempt Norris' state tort claims. Therefore, we reverse the order of the circuit court dismissing counts I and II of Norris' complaint and vacate the final judgment entered by the circuit court.

I. STANDARD OF REVIEW

Defendants moved to dismiss counts I and II of Norris' complaint based on lack of subject matter jurisdiction, pursuant to HRCP Rules 12(b)(1) and 12(h)(3).[1] A trial court's dismissal for lack of subject matter jurisdiction is a question of law, reviewable *de novo*. *McCarthy v. U.S.*, 850 F.2d 558, 560 (9th Cir. 1988), *cert. denied*, 489 U.S. 1052 (1989); *see also Moir v. Greater Cleveland Regional Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Moreover, we adopt the view of the Ninth Circuit Court of Appeals in *Love v. U.S.*, 871 F.2d 1488 (9th Cir. 1989):

> Our review [of a motion to dismiss for lack of subject matter jurisdiction] is based on the contents of the complaint, the allegations of which we accept as true and construe in the light most favorable to the plaintiff. Dismissal is improper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Id. at 1491 (citations omitted). However, "when considering a motion to dismiss pursuant to Rule 12(b)(1) the [trial] court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy*, 850 F.2d at 560 (citations omitted); *see also* 5A C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE §1350, at 213 91990). Therefore, based on the applicable standard of review, we set forth the facts below as alleged by Norris in his complaint and in the materials presented to the trial court outside the pleadings.[2]

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[1]HRCP Rule 12(b)(1) provides in pertinent part that "[e]very defense . . . shall be asserted in the responsive pleading . . . except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the submit matter(.)"

HRCP Rule 12(h)(3) provides: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

[2]Our review of the record reveals that attached to defendants' Motion to Dismiss Counts I and II For Lack of Subject Matter Jurisdiction and the various memoranda filed by the parties in support of or in opposition to the motion were a number of exhibits which the trial court considered in ruling on the subject motion.

II. FACTS

Norris, an aircraft mechanic licensed by the Federal Aviation Administration (FAA), was employed by Hawaiian Airlines, Inc. (HAL) from February 2, 1987 to August 3, 1987. Norris' FAA license carried a rating that gave him the authority to approve and return an aircraft to service after he had made, supervised, or inspected certain repairs performed on the aircraft. *See* Certification: Airmen Other Than Flight Crewmembers, 14 C.F.R. §§65.85, 65.87 (1987). Norris, however, was not allowed to approve and return to service any aircraft or aircraft parts to which repairs had been made that did not conform to the applicable Federal Aviation Regulations (FAR). Any fraudulent entry by a mechanic in any record or report required by the FAR is cause for the FAA to suspend or revoke the mechanic's FAA license. *See* Maintenance, Preventive Maintenance, Rebuilding and Alteration, 14 C.F.R. §43.12 (1992).

On July 15, 1987,[3] Norris was conducting a routine preflight inspection on one of HAL's DC-9 aircraft when he noticed that one of the main landing gear tires was worn. When the tire and bearing were removed, Norris and the other mechanics present observed that the axle sleeve, which normally has a mirror-smooth surface, was scarred and grooved, with gouges and burn marks clearly visible.[4] Norris and the other mechanics believed that the part was unsafe and should be replaced. However, Norris' supervisor, Justin Culahara (Culahara), ordered the mechanics to sand the axle sleeve by hand and put a new bearing and tire over it. The repairs were performed in accordance with Culahara's orders, and the aircraft made its scheduled flight.

When Norris was about to leave at the end of his shift, Culahara ordered Norris to "sign off" the maintenance record for the installation of the tire, which under the applicable FAR operated as a certification by Norris that the repair had been performed satisfactorily and the aircraft was fit for return to service. Norris refused, explaining that the sleeve was unsafe. He indicated that

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[3]According to Norris' complaint, he was assigned to inspect the aircraft in question on July "14," 1987, but "punched out on July 15, 1987."

[4]Such damage may cause the sleeve to rub against the wheel bearing and, in turn, may cause the bearing or entire landing gear to fail.

he would sign off if Culahara "could show [Norris] in the [McDonnell Douglas] manual where it said that the axle was in satisfactory condition." Culahara informed Norris that if he did not sign the maintenance record, he [Norris] would be fired. Norris refused to sign off and was immediately suspended pending a termination hearing. Norris left the premises, and when he returned home, he called the FAA to report that there was a problem with an HAL aircraft that he had serviced. The FAA official advised Norris that the FAA would look into the matter.

Following his suspension, Norris invoked the grievance procedure outlined in the collective bargaining agreement (CBA), which governed the terms and conditions of his employment. The agreement was entered into between Norris' union, the International Association of Machinists, and HAL, pursuant to the provisions of the REA. The CBA provides that an employee may be disciplined or discharged only for just cause. It also states that an employee's refusal to perform work in violation of health and safety law "shall not warrant disciplinary action."

Norris' termination hearing was held on July 31, 1987, which resulted in his termination for "insubordination" on August 3, 1987.[5] After he was terminated, Norris contacted the FAA and gave the details of what happened on July 15, 1987. On August 4, 1987, the FAA seized the axle sleeve and began a comprehensive investigation into the length of time the sleeve had been on the aircraft and the number of times the sleeve had been signed off while damaged. In September 1987, the FAA broadened its investigation to include other DC-9 aircraft. Defendants state in their answering brief:

> While it is true that the FAA initially charged HAL with violation of Federal Aviation Regulations regarding the condition of the axle sleeve on August 4, 1987, the FAA made no findings of fact in that charge, and the charge was ultimately dismissed by the FAA with no findings of fact or conclusions of law having been made.

[5]Culahara's supervisor, Norman Matsutaki, Assistant Director of Base Management, presided over the termination proceedings as hearings officer.

Following his termination, Norris filed a grievance seeking reinstatement and back pay. Norris' union representative referred the grievance for a "Step 3" hearing[6] pursuant to the CBA. However, before the hearing was conducted, HAL's Vice President of Maintenance and Engineering, Howard E. Ogden (Ogden), offered to "mitigate" Norris' punishment to suspension without pay for the period August 3, 1987 to September 15,1987. Ogden warned Norris by letter that "any further instance of failure to perform [his] duties in a responsible manner" could result in his being discharged. Norris did not respond to HAL regarding the reinstatement offer, but filed suit against HAL in circuit court on December 8, 1987.[7]

On September 20, 1989, Norris filed this action against defendants Paul Finazzo, who at the time of Norris' termination was president of HAL, Ogden, and Hatsuo Honma, HAL's Director of

[6]Under Article XV, paragraph B. 3 of the CBA, the Step 3 hearing process is an appeal "to the Department Head under whose jurisdiction the employee works."

[7]HAL removed the case to the United States District Court on January 6, 1988. The district court determined that Count V of Norris' complaint, which alleged a claim for breach of the CSA, was completely preempted by the RLA and dismissed it because Norris had failed to exhaust his remedies under the CBA. The district court found the remaining claims to be within its discretionary pendent jurisdiction, but chose not to hear the claims and remanded the case to state court. Norris' complaint against HAL, identified as Civil No. 87-3894, is not at issue on this appeal because the circuit court's order and judgment entered in that case were vacated by this court due to lack of jurisdiction following removal from federal court. We stated:

> Upon review of the record it appears Civil No. 87-3894 [Norris v. HAL] was removed to federal court under 28 U.S.C. §1446. It further appears that there is no certified order of remand in the record as required by 28 U.S.C. §1447(c) for the state court to proceed with the case. Thus, the circuit court lacked jurisdiction and its orders and judgment in Civil No. 87-3894 must be vacated. *See, e.g.*, 14A Wright, Miller & Cooper, *Federal Practice & Procedure* §3737 (West 1985).
>
> IT IS HEREBY ORDERED the circuit court's judgment dismissing Count I of the Complaint in Civil No. 87-3894 is vacated and the appeal from the HRCP 54(b) certified orders and judgment in Civil No. 87-3894 is dismissed.
>
> IT IS FURTHER ORDERED the appeal from the HRCP 54(b) certified order and judgment in Civil No. 89-2904 [Norris v. Finazzo] is properly before the court and shall proceed without additional briefing.

Base Management.[8] Norris' complaint alleges that defendants "directed, confirmed or ratified" the acts of HAL's employees resulting in his discharge in violation of public policy as articulated in the Federal Aviation Act and the FAR (count I), and in the Hawaii Whistleblowers' Protection Act (HWPA), Hawaii Revised Statutes (HRS) §§378-61 through -69 (Supp. 1991) (count II).[9] On October 22, 1990, the circuit court concluded that the RLA preempted Norris' state tort claims and therefore dismissed counts I and II for lack of subject matter jurisdiction. The circuit court certified the dismissals as final pursuant to HRCP 54(b), and this timely appeal followed.

III. DISCUSSION

We first address whether the RLA preempts Norris' claims for discharge in violation of public policy. Because we conclude it does not, we next address whether the state tort claim as alleged by Norris exists under Hawaii law.

A. Preemption Issue

"Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between federal and state law." *Louisiana Public Service Comn'n v. F.C.C.*, 476 U.S. 355, 368 (1986). Whether a state law establishing a cause of action is preempted in a given case is a question of congressional intent. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985).

The RLA was enacted to promote stability in labor management relations by providing a comprehensive framework for resolving labor disputes in the railroad industry, *Atchison, Topeka & Santa Fe Railway Co. v. Buell*, 480 U.S. 557, 562 (1987), and was extended to the airline industry pursuant to 45 U.S.C. §184

Norris v. Hawaiian Airlines, Inc., No. 35022 (Haw. July 24, 1993) (order of partial dismissal).

[8]Norris' complaint names individual representatives authorized to act on behalf of HAL, but does not name HAL. However, the complaint does not allege that the individual defendants were acting outside the scope of their authority. Thus, because a corporation can act only through its authorized representatives, for purposes of this opinion, references to "employer" (HAL) are synonymous with the named defendants.

[9]The remaining counts in Norris' complaint are not at issue on this appeal.

(1988). The purposes of the RLA are to provide for, among other things,

> the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions [and] . . . the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

45 U.S.C. §151(a).

The United States Supreme Court in *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 491 U.S. 299 (1989), was called upon to examine the "two classes of controversy Congress had distinguished in the RLA." *Id.* at 302. These two classes of controversy were "regarded traditionally as the major and the minor disputes of the railway labor world." *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 723 (1945). However, because the Court had not previously "articulated an explicit standard for differentiating between major and minor disputes[,]" *Consolidated Rail*, 491 U.S. at 302, the Court in *Consolidated Rail* was compelled to do so.

> A "major" dispute
>
> relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

Id. (citing *Burley*, 325 U.S. at 723). Parties involved in major disputes are required "to undergo a lengthy process of bargaining and mediation[,] [u]ntil they have exhausted those procedures[.] . . . Once this protracted process ends and no agreement has been reached, the parties may resort to the use of economic force." *Id.* at 302-03 (citations omitted).

> A "minor" dispute, on the other hand,
>
> contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which

> no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. . . . [T]he claim is to rights accrued, not merely to have new ones created for the future.

Id. at 303 (citing *Burley*, 325 U.S. at 723). Mandatory arbitration is the exclusive remedy for claims arising from minor disputes. *See id.* at 303-04; *see also Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 322-23 (1972).

The mandatory arbitration provision of the RLA provides:

> The disputes between an employee or group of employees and a carrier or carriers *growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions*, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

45 U.S.C. §153 First (i) (emphasis added).

Although the RLA provides a compulsory and binding arbitral system comprised of a National Railroad Adjustment Board, *see* 45 U.S.C. §153 First, there is no national adjustment board in the airline industry; minor disputes are resolved by adjustment boards established by the airlines and the unions. *See Consolidated Rail*, 491 U.S. at 304 n.4. The decision of an adjustment board is final and binding. 45 U.S.C. §153 First (m).

The parties in this case agree that Norris' claims do not give rise to a "major" dispute. The question then is whether Norris' claims may be deemed "minor," thereby preempting his state tort action and requiring him to submit to mandatory arbitration pursuant to the RLA.

Defendants contend that Norris' claims "constitute a 'dispute between [a] carrier and [an] employee' within the meaning of 45

U.S.C. §152 First [and therefore conclude that] it shall be the duty of 'all carriers, *their officers, agents and employees* . . . to settle all disputes, whether arising out of the application of [collective bargaining] agreements, or otherwise[.]'" (Emphasis in original.) This court in *Puchert v. Agsalud*, 67 Haw. 25, 677 P.2d 449 (1984), *appeal dismissed for want of substantial federal question*, 472 U.S. 1001 (1985), examined the scope of the preemption as it applied to airline employee Puchert's complaint of discharge from employment in violation of HRS §378-32(2) of the HWPA for filing a workers' compensation claim. We noted that

> [c]ases holding that state law claims are pre-empted by the RLA are clearly distinguishable.[10] The complaints filed in those cases constituted state law claims that were non-existent but for the collective bargaining agreement which provided remedies for such claims, or the state law claims were identical to the contractual claims provided for in the collective bargaining agreement.

Id. at 29, 677 P.2d at 454 (citations omitted) (footnote added). We held that Puchert's complaint was not a "minor dispute" subject to mandatory arbitration under the RLA because

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[10]The following cases cited in *Puchert* are relied upon by defendants in this case:

> *Andrews v. Louisville and Nashville R.R. Co.*, [406 U.S. 320 (1972)] (state law claim of unlawful discharge depended solely on contract right not to be discharged); *Schroeder v. Trans World Airlines, Inc.*, [702 F.2d 189 (9th Cir. 1983)] (complaint of unlawful business practices in violation of California statutes was actually a complaint of wrongful demotion under the collective bargaining contract); *Beers v. Southern Pacific Transportation Co.*, 703 F.2d 425 (9th Cir. 1983) (complaints alleging intentional infliction of emotional distress referred to rights covered or substantially related to the collective bargaining agreement); *Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir.), *cert. denied*, 439 U.S. 930 (1978) (emotional distress incident to discharge from employment rather than result of alleged conspiracy); *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) (state claim raised identical to claim employee would have made had he pursued his grievance through channels specified in the collective bargaining agreement).

Puchert, 67 Haw. at 29-30, 677 P.2d at 454.

> *[t]he resolution of the dispute . . . does not hinge on the application or interpretation of the collective bargaining agreement* between Pan Am and Puchert's union. Puchert complains of a violation of his right not to be discharged from his employment solely because he suffered from a work injury compensable under the state's worker's compensation law. *This right finds its source not in the collective bargaining agreement between Pan Am and Puchert's union, but in the statute.*

Id. at 30, 677 P.2d at 454 (emphasis added) (citation omitted).

Although a "minor" dispute contemplates the existence of a CBA, the term "grievances" as used in the mandatory arbitration provision of the RLA, could arguably be ambiguous and may be literally read to include disputes arising outside a CBA. However, the United States Supreme Court clearly determined otherwise in *Consolidated Rail*. The Court stated that "minor" disputes, to which §153 First (i) applies, are those that "may be conclusively resolved by interpreting the existing [collective bargaining] agreement." 491 U.S. at 305 (citation omitted). The Court also stated that "[w]here an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement." *Id.* at 307. The Supreme Court's interpretation of the RLA's mandatory arbitration provision demonstrates its belief that Congress intended to affect only those disputes involving contractually defined rights. Moreover, the plain language of §153 First (i) does not support preemption of disputes independent of a labor agreement.

In determining the RLA's scope of preemption, Norris asserts that the United States Supreme Court cases reviewing preemption under the Labor Management Relations Act (LMRA), 29 U.S.C. §§141-188, are analogous. Defendants, on the other hand, contend that such cases are inapposite to this case because preemption under the RLA is broader than under §301 of the LMRA. We note that although all parallels between the RLA and the LMRA must be drawn "with utmost care," *Chicago & N. W. Ry. Co. v. United Transp. Union*, 402 U.S. 570, 579 n.11 (1971), the Supreme Court has relied upon the "common law" of labor relations developed under the LMRA for assistance in construing the RLA. *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*,

394 U.S. 369, 383-84 (1969).[11] *See also Puchert*, 67 Haw. at 32, 677 P.2d at 455 ("courts have [also] applied standards adopted in NLRA pre-emption cases to [Railway Labor Act] cases").

The United States Supreme Court has stated:

> Of course, not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is preempted by §301 *or other provisions of the federal labor law* . . . . Such rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standard they disfavored. Clearly, §301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law. In extending the preemptive effect of §301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to pre-empt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.

Allis-Chalmers Corp., 471 U.S. at 211-12 (emphasis added).

In *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), plaintiff was injured on the job and filed a workers' compensation claim. Upon learning of the claim, the employer fired plaintiff for filing an allegedly false claim. Plaintiff filed a grievance, alleging that she had been discharged without just cause in violation of the CBA. While arbitration was proceeding, plaintiff filed a retaliatory discharge action in Illinois state court contending that she had been discharged for exercising her rights under Illinois' workers' compensation laws. The employer contended that the state law tort action was preempted by provisions of the CBA. The federal trial and appeal courts agreed and dismissed

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[11]In *Brotherhood of R.R. Trainmen*, the Court stated: "The Court has in the past referred to the [National Relations Act (NLRA)] for assistance in construing the Railway Act[.]" For purposes of this discussion, the NLRA, 29 U.S.C. §§151-187 (1988), is essentially equivalent to the LMRA because "the Labor-Management Relations Act, 1947, includes as its subchapter II the National Labor Relations Act of 1935 as amended by the Labor-Management Relations Act of 1947." 48 Am. Jur. 2d, *Labor and Labor Relations* §546 (1979) (footnote omitted).

the action. *See Lingle v. Norge Div. of Magic Chef, Inc.*, 618 F. Supp. 1448 (S. D. Ill. 1985); *Lingle v. Norge Div. of Magic Chef, Inc.*, 823 F.2d 1031 (7th Cir. 1987). The Supreme Court reversed, holding that application of state law is preempted by §301 of the LMRA only if the application requires the interpretation of a CBA. Examining Illinois law and the CBA at issue, the Supreme Court reasoned that in order

> to show retaliatory discharge, the plaintiff must set forth sufficient facts from which it can be inferred that (1) he was discharged or threatened with discharge and (2) the employer's motive in discharging or threatening to discharge him was to deter him from exercising his rights under [Illinois Workers' Compensation] Act or to interfere with his exercise of those rights. Each of these purely factual questions pertains to the conduct of the employee and the conduct and motivation of the employer. *Neither of the elements requires a court to interpret any term of a collective-bargaining agreement.* To defend against a retaliatory discharge claim, an employer must show that it had a nonretaliatory reason for the discharge; this purely factual inquiry likewise does not turn on the meaning of any provision of a collective-bargaining agreement. *Thus, the state-law remedy in this case is "independent" of the collective-bargaining agreement in the sense of "independent" that matters for [LMRA] §301 preemption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement.*

Lingle, 486 U.S. at 407 (citations omitted) (emphasis added).

In *Maher v. New Jersey Transit Rail Operations, Inc.*, 125 N.J. 455, 593 A.2d 750 (1991), the New Jersey Supreme Court determined that plaintiff's claim of retaliatory discharge, based on New Jersey's Whistleblower statute, was not preempted by the RLA. In its analysis, the New Jersey court rejected the employer's argument that §301 of the LMRA has "less preemptive force" than the RLA. *Id.* at 472, 593 A.2d at 759. The court explained:

> When a collective-bargaining agreement subject to the [LMRA] establishes a grievance and arbitration remedy, that remedy preempts state-law-based claims by force

> of section 301. That preemptive effect is different from that granted to the arbitral remedies established by the [RLA]. Preemption becomes a dominant consideration under both statutes when the arbitration process can be disrupted or when the uniformity of national law is threatened by a state claim that must be vindicated through outside interpretation of a collective-bargaining agreement.

Id. at 472-73, 593 A.2d at 759 (citations omitted). Persuaded by the analysis of the courts in *Lingle* and *Maher*, we agree with Norris that LMRA preemption cases are analogous, and thus, may provide guidance in determining the scope of preemption under the RLA.

In *Lingle*, the Supreme Court held that application of state law is preempted by the LMRA only if the application is dependent on the interpretation of a collective bargaining agreement. That holding is virtually indistinguishable from the Supreme Court's reading of §153 First (i) of the RLA in *Consolidated Rail* and is also consistent with this court's interpretation in *Puchert*. We conclude that Congress intended the mandatory arbitration provision of the RLA be confined to the same limits the Supreme Court applied to the LMRA in *Lingle*.

In *Maher*, defendant New Jersey Transit Rail Operations (NJT) argued, as do the defendants in this case, that *Consolidated Rail* provides that a disagreement over an employer's action is a minor dispute if the contested action is arguably justified by the terms of the parties' [CBA]." The New Jersey Supreme Court noted that this test, articulated in *Consolidated Rail*, was not controlling in *Maher* because the standard was adopted in order to determine whether a disagreement was for a *major dispute* or a *minor dispute*.

The New Jersey court noted:

> The danger with indiscriminate use of the "arguably justified" standard in distinguishing between minor disputes and complaints that do not implicate the Railway Labor Act is that it enables a railway "simply [to] hide behind the arbitration provisions of a collective bargaining agreement to bypass [its] employees' statutory right[s]."

Maher, 125 N.J. at 470, 593 A.2d at 758 (citation omitted).

However, the New Jersey Court explained that even when considering the "arguably justified" test, Maher's whistleblower-based claim was not preempted by the RLA. The court stated:

> The key to this puzzle lies in the nature of the "disputed action." . . . The nub of the disputed action, then, is not that Maher was discharged, which "arguably" would be covered by the "just-cause" provision of the collective-bargaining agreement, but that he was discharged in retaliation for having reported violations of the law. The pertinent question is whether the collective-bargaining agreement addresses NJT's alleged conduct.
>
> Although NJT's burden is "relatively light" in showing that the agreement brings Maher's claim within the exclusive jurisdiction of the Adjustment Boards, the employer has not met that minimal standard. NJT has not suggested (the suggestion would be "obviously insubstantial") that a retaliatory discharge is "sanctioned" or "justified" by a provision in the agreement. It can point to no part of the collective-bargaining agreement that demonstrates that the carrier and the union have agreed on standards relevant to Maher's situation. Maher's claim of retaliatory discharge does not in any way turn on an interpretation of the just-cause-discharge clause or any other clause in the agreement.

Id. at 470-71, 593 A.2d at 758 (citation omitted).

In this case, defendants argue that Article IV and XVII of the CBA require interpretation in order to determine Norris' claim of retaliatory discharge. Article IV, paragraph D. 4(a)., provides that an aircraft mechanic "may be required to sign work records in connection with the work he performs." Defendants point to Culahara's (Norris' supervisor) deposition which indicates that he told Norris that he was not asking that Norris sign-off for the condition of the axle sleeve, but to sign off for the tire change in which Norris participated. On these facts, defendants assert that

> Norris' "wrongful discharge" will require interpretation of Article IV of the CBA because HAL could certainly legitimately discipline Norris for refusing to sign a work record if the work record did not cover the axle sleeve and if Norris could have noted his objections to the condition of the axle sleeve on any work record tendered to him for signature. *See Consolidated Rail Corp. v. Railway Labor Execs Assn.*, 491 U.S. 299, 307 (1989) (If an RLA employer asserts a contractual right to take an action contested by employees, the controversy is subject to the RLA's grievance/arbitration procedures if the employer's action is "arguably justified" by the terms of the collective bargaining agreement) [.]

We disagree. As in *Maher*, Norris' retaliatory discharge claim is based on his allegation that he was terminated for reporting a violation of the law, and defendants do not suggest that a retaliatory discharge is sanctioned or justified by a provision in the agreement nor do they point to any part of the CBA which demonstrates that the carrier and union have agreed on standards relevant to Norris' situation. Although defendants' defense is that Norris was terminated for insubordination, and thus "just cause," for not signing off on the work order, the respective positions of the parties to be presented at trial are, as noted in *Lingle*, "purely factual questions [which] pertain[] to the conduct of the employee and the conduct and motivation of the employer. Neither of [the parties' positions] requires a court to interpret any term of a collective bargaining agreement.[12] *Lingle*, 486 U.S. at 407.

> Defendants also argue that Article XVII of the CBA
>
> which protects employees from discipline for refusing to perform work in violation of state or federal health and safety laws, would have to be interpreted to determine if HAL acted "wrongfully" by initiating disciplinary action against Norris for refusal to sign off the work record. "The issue of safety in the workplace is a commonplace issue for arbitrators to consider in discharge cases[.]" *United Paper Workers International Union v. Misco, Inc.*, 484 U.S. 29, 44 n.11 (1987).

---

[12]Defendants also claim that Norris was merely suspended rather than terminated, which is also a factual issue to be determined by the trier of fact and is not dependent on the interpretation of any provision of the CBA.

However, the issue raised by Norris is not one of safety in the "workplace" for the benefit of the employees, but is focused on the public policy of protecting the safety of the flying public. As Norris points out,

> Article XVII never refers to the safety of the public, which Norris was trying to protect. Instead, it refers, for example, to physical examinations for employees, to clean and dry washroom floors, to lights, to employee lockers, to unsafe and unsanitary working conditions, to protective apparel for employees, to rain repellent garments and boots for employees, to ear muffs, and to safety goggles.

We conclude that Norris' claim for retaliatory discharge is not dependent on an interpretation of Articles IV or XVII of the CBA or any other provision of the CBA. Consequently, Norris' claims are not preempted under the RLA.

B. Norris' State Tort Claims

1.

Defendants also argue that, even if Norris' claims are not preempted under the RLA, counts I and II, which are based on violations of public policies, do not state a claim arising under Hawaii law. Initially, we note that defendants do not deny the existence of the public policies relied upon by Norris under the Federal Aviation Act, the FAR, and the HWPA. However, defendants contend that, under the holding of *Parnar v. Americana Hotels, Inc.*, 65 Haw. 370, 652 P.2d 625 (1982), the state tort claim for discharge in violation of public policy is limited to at-will employees and does not extend to unionized employees who are protected by a "mandatory grievance/arbitration procedure and just cause standard for termination" under the CBA. We disagree.

In *Parnar*, a non-union employee (Parnar) filed a complaint alleging retaliatory discharge against Americana Hotels, Inc., the managing partner of the Ala Moana Hotel in Honolulu, Flagship International, Inc., the operator of the hotel, and Mark E. Liquori, the hotel's controller who was Parnar's immediate supervisor. Parnar asserted that public policy was violated when she was discharged for giving truthful information about her employer's possible federal antitrust violations. We held that an employer may be held liable in tort where his discharge of an employee violates

a clear mandate of public policy." *Parnar*, 65 Haw. at 380, 652 P.2d at 631. This court determined that the relevant and clear public policy arising from the federal antitrust laws is to protect the public interest in free and unrestrained competition. We stated that "a retaliatory discharge in apparent furtherance of antitrust violations contravenes public policy." *Id.*

Defendants, however, maintain that Hawaii's public policy which "strongly favors upholding arbitration agreements" overrides the extension of *Parnar* to this case. Although we agree that Hawaii's public policy as reflected by our Arbitration and Award Statute, HRS chapter 568, strongly favors arbitration over litigation, the mere existence of an arbitration agreement does not mean that the parties must submit to an arbitrator disputes which are outside the scope of the arbitration agreement. *See Koolau Radiology, Inc. v. Queen's Medical Center*, 73 Haw. 433, 833 P.2d 890 (1992) (the arbitration agreement limited the scope of an arbitrator, a real estate appraiser, to determine lease values and did not extend the arbitrator's authority to decide legal issues such as the statute of frauds or the parol evidence rule as related to an alleged oral agreement).

> The arbitral forum must be authorized and competent to resolve the dispute brought before it. "[A]rbitration is a continuation of the collective-bargaining process," and the role of the arbitrator is to interpret the labor contract and to apply the agreement to the facts of a dispute. On the other hand, the arbitrator "ordinarily cannot consider public interest, and does not determine violations of law or public policy."

Maher, 125 N.J. at 474, 593 A.2d at 760 (citations omitted).

In this case, there is no question that the relevant public policy of the Federal Aviation Act and the FAR is to protect the public from shoddy repair and maintenance practices in the aviation industry which may endanger the flying public. Moreover, we view the enactment of the HWPA by our legislature following the *Parnar* decision as a clear mandate of public policy." *Parnar*, 65 Haw. at 380, 652 P.2d at 631. The HWPA provides in pertinent part:

> An employer shall not discharge, threaten or otherwise discriminate against an employee regarding the employ-

> ee's compensation, terms, conditions, location, or privileges of employment because:
>
> (1) The employee . . . reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of a law or rule adopted pursuant to law of this State, a political subdivision of this State, or the United States, unless the employee knows that the report is false[.]

HRS § 378-62(1) (Supp. 1991).

Our review of the legislative history of the HWPA reveals that the legislature intended to safeguard the general public by giving certain protections to individual employees who "blow the whistle" for the public good. *See* Senate Stand. Comm. Rep. No. 1127, 1987 Senate Journal, at 1391-92 ("providing protection to government employees and citizens who are willing to 'blow the whistle' when they are aware of ethical or other violations of law will help the State maintain high standards of ethical conduct."); *see also* Hse. Stand. Comm. Rep. No. 25, 1987 House Journal, at 1090. The legislature did not restrict such protections to at-will employees. On the contrary, it left open for the courts to further determine the development of the common law in retaliatory discharge cases:

> Our [s]upreme [c]ourt has recently developed a common law tort for discharging an employee contrary to public policy in *Parnar v. Ala Moana Americana Hotels, Inc.*, 65 Haw. 370 (1982). The scope of this newly created right, the remedies which are allowed, and the procedures which are applicable have not been jury determined. Your Committee does not believe that the legislature should stifle or restrict the developing common law. Therefore, *a new section was added to provide that the statutory rights of action created herein are not to be construed to limit the development of the common law or as a legislative preemption of the common law on practices sought to be prohibited by this Act.*

Id. (emphasis added).

Furthermore, we note that the legislature contemplated the potential conflict between union and non-union employees by

specifically providing that "[w]here a collective bargaining agreement provides inferior rights and remedies to those provided in [the HWPA], the provisions of [the HWPA] shall supersede and take precedence over the rights, remedies, and procedures provided in collective bargaining agreements." HRS §378-66(b) (Supp. 1991).

Amicus[13] Hawaii Employers Council (HEC] urges that there is no need to extend *Parnar* to cover unionized employees. HEC argues that:

> Simply because the remedies in each forum may be different does not mean that an employee has lesser protection under a collective bargaining agreement. Unionized employees have equitable remedies available under their collective bargaining agreements that are not available in actions at law. Reinstatement is a remedy that is commonly awarded by arbitrators under collective bargaining agreements. Moreover, punitive damages are available in arbitration if the parties have not excluded them.

As the Superior Court of Pennsylvania has held:

> [W]e are not persuaded by appellant's arguments that the wrongfully discharged at-will employee has greater remedies available in a civil action than does a union employee under a collective bargaining agreement since a civil court could award punitive damages.* While the at-will employee may be entitled to punitive damages in a civil action, he does not have the ability to obtain some of the remedies available to union members; such as reinstatement to his position, which is a commonly provided remedy in labor agreements. Thus, we find that a difference in remedies is not enough to justify an extension of the coverage of a wrongful discharge action.

---

[13]Amicus curiae briefs were filed by HEC, Aloha Airlines, Inc., and International Association of Machinists' and Aerospace Workers, AFL-CIO and District Lodge 141 of the International Association of Machinists' and Aerospace Workers, AFL-CIO.

> *Although punitive damages are not generally available under collective bargaining agreements, if the agreement *is silent as to remedies*, arbitrators can award punitive damages.

(Emphasis added.)

HEC's argument is without merit because the CBA in this case is *not* silent as to remedies. Article XV of the CBA, entitled "Grievance Procedure," paragraph H, provides:

> If as a result of any hearing or appeals therefrom it is found the suspension or discharge was not justified, the employee shall be reinstated without loss of seniority and made whole for any loss of pay he suffered by reason of his suspension or discharge, and his personnel records shall be corrected or cleared of such charge. If a suspension rather than discharge results, the employee shall have that time he has been held out of service without pay credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this Agreement, the *maximum liability of the Company shall be limited to the amount of normal wages he would have earned in the service of the Company had he not been discharged or suspended.*

(Emphasis added.)

The difference between the remedies available under the CBA and the measure of damages under a state tort action are substantial. Where the CBA limits the employer's liability to reinstatement and back wages, the measure of damages under state tort actions includes a sum of money which will restore [claimant] to the position he [or she] would be [in] if the wrong had not been committed." *Nobriga v. Raybestos-Manhattan, Inc.*, 67 Haw. 157, 162, 683 P.2d 389, 393 (citing *Rodrigues v. State*, 52 Haw. 156, 167, 472 P.2d 509, 517 (1970)), *recon. denied*, 67 Haw. 683, 744 P.2d 779 (1984). Where the evidence justifies tort recovery, it may generally include special damages, which compensate claimants for specific out of pocket financial expenses and losses, general damages for pain, suffering, and emotional distress, *In Re Hawaii Federal Asbestos Cases*, 734 F. Supp. 1563 (1990), and punitive damages assessed for the purpose of punishing the defendant for aggravated or outrageous misconduct and to deter defendant and others from similar conduct in the future. *See Masaki v. General Motors*, 73 Haw. 3, 780 P.2d 566, *recon. denied*, 71 Haw. 664, 833 P.2d 899 (1989).

Therefore, we conclude that the wide disparity between the remedies available under the CBA and the damages potentially recoverable in a state tort action, coupled with the legislature's enactment of the HWPA following *Parnar* justifies the extension of *Parnar* to this case. We believe such extension promotes the public policies underlying the Federal Aviation Act, the FAR, and the HWPA.

2.

Because we have determined that Norris' state tort claims are not dependent on any interpretation of the CBA, we must now consider "whether application of state law in this case interferes with the scheme of the RLA." *Puchert v. Agsalud*, 67 Haw. at 31, 677 P.2d at 455. We are in accord with the New Jersey Supreme Court in determining that the RLA does not "express [any] congressional limitation of the right of States to protect an employee from discharge in retaliation for reporting violations of law, nor can such limitation be inferred from the federal act's scope." *Maher*, 125 N.J. at 471, 593 A.2d at 758. Moreover, we have held that Norris' claims are not subject to arbitration under the RLA, and thus, we find the defendants' argument that the intent of the RLA, which is to provide a specific arbitral forum for industrial disputes "concerning rates of pay, rules, or working conditions," would be undermined is without merit. Finally, there is nothing in the record to indicate that the intent of the RLA to promote stability of labor-management relations will in any way be disrupted by not preempting Norris' state tort claims. Thus, we conclude that the application of Norris' state-based-tort claims do not interfere with the scheme of the RLA.

IV. CONCLUSION

Based on the foregoing discussion, we reverse the order of the trial court dismissing counts I and II of Norris' complaint, vacate the final judgment, and remand this case for further proceedings.

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APPENDIX B

NO. 16263

IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL NO. 87-3984-12	) CIV. NOS. 87-3894-12 and
GRANT T. NORRIS,	) 89-2904-09
	)
Plaintiff-Appellant,	) APPEAL FROM THE FINAL
	) JUDGMENT PURSUANT TO
vs	) RULE 54(b) OF THE HAWAII
	) RULES OF CIVIL PROCEDURE
HAWAIIAN AIRLINES, INC.,	) WITH REGARD TO COUNT I
	) OF THE COMPLAINT IN
Defendant-Appellee.	) CIVIL NO. 87-3894-12
_____	) (REINSTATED ON JUNE 30, 1992)
	)
CIVIL NO. 89-2094-09	) FIRST CIRCUIT COURT
GRANT T. NORRIS,	)
	)
Plaintiff-Appellant,	)
	)
vs.	)
	)
PAUL J. FINAZZO,	)
HOWARD E.	)
OGDEN, HATSUO HONMA,	)
and	)
DOES 1-10,	)
	)
Defendants-Appellees.	)
_____	)

MEMORANDUM OPINION

Plaintiff-appellant Grant T. Norris (Norris) appeals from the "reinstated" final judgment of the Circuit Court of the First Circuit, which was certified as final, pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 54(b), and entered in favor of

defendant-appellee Hawaiian Airlines, Inc. (HAL) on June 30, 1992. The "reinstated" final judgment was originally entered on December 5, 1990 from which a prior appeal was taken. *See Norris v. Hawaiian Airlines, Inc.*, No. 15022 (Haw. Dec. 16, 1992). However, this court on July 24, 1991, issued an order dismissing the appeal from the December 5 judgment[1] because, having previously removed the case to federal court, "there [was] no certified order of remand in the record as required by 28 U.S.C. 1447(c) for the state court to proceed with the case." *Id.*, slip op. at 7 n.7. (quoting this court's order of partial dismissal, filed July 24, 1991, in case No. 15022). A certified copy of the remand order was thereafter properly placed in the court file. Norris then successfully moved to reinstate the orders and final judgment from which this timely appeal is taken.

Norris had filed suit against HAL alleging discharge from his employment in violation of public policy. The circuit court granted HAL's motion to dismiss for lack of subject matter jurisdiction, dismissing count I of Norris' complaint on the ground that Norris' claims were preempted by the Railway Labor Act (RLA), 45 U.S.C. 151-188 (1988). For the reasons stated in our recent opinion, *Norris v. Hawaiian Airlines, Inc.*, No. 15022 (Haw. Dec. 16, 1992), we disagree with the circuit court's determination and hold that the RLA does not preempt Norris' state tort claims.

We therefore vacate the "reinstated" final judgment entered by the circuit court on June 30, 1992 and remand this case for further proceedings.

DATED: Honolulu, Hawaii, February 2, 1993.

On the briefs:

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Grant T. Norris

[1]The court retained jurisdiction over Norris' action against the individual representatives authorized to act on behalf of (Civ. No. 89-2904-09), which Norris had named in a separate lawsuit that had been consolidated with the action against (Civ. No. 87-3894-12).

Kenneth B. Hipp and
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Hawaiian Airlines, Inc.

APPENDIX C

NO. 16263
IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL NO. 87-3984-12 GRANT T. NORRIS, Plaintiff-Appellant, vs. HAWAIIAN AIRLINES, INC., Defendant-Appellee.	) CIV. NOS. 87-3894-12 and 89-2904-09)) APPEAL FROM THE FINAL) JUDGMENT PURSUANT TO) RULE 54(b) OF THE HAWAII) RULES OF CIVIL PROCEDURE) WITH REGARD TO COUNT I) OF THE COMPLAINT IN) CIVIL NO. 87-3894-12) (REINSTATED ON JUNE 30, 1992)
CIVIL NO. 89-2094-09 GRANT T. NORRIS, Plaintiff-Appellant, vs. PAUL J. FINAZZO, HOWARD E. OGDEN, HATSUO HONMA, and DOES 1-10, Defendants-Appellees.	)) FIRST CIRCUIT COURT)) HONORABLE ROBERT G. KLEIN) HONORABLE PHILIP T. CHUN) HONORABLE SIMEON R. ACOBA, JR.) HONORABLE PATRICK K.S.L. YIM) HONORABLE MARCIA WALDORF)) HONORABLE SHUNICHI KIMURA)) HONORABLE BARRY KURREN) HONORABLE WENDELL K. HUDDY) Judges)

JUDGMENT ON APPEAL

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NO. 16263
IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL NO. 87-3984-12 GRANT T. NORRIS, Plaintiff-Appellant, vs. HAWAIIAN AIRLINES, INC., Defendant-Appellee.	) CIV. NOS. 87-3894-12 and 89-2904-09)) APPEAL FROM THE FINAL) JUDGMENT PURSUANT TO) RULE 54(b) OF THE HAWAII) RULES OF CIVIL PROCEDURE) WITH REGARD TO COUNT I) OF THE COMPLAINT IN) CIVIL NO. 87-3894-12) (REINSTATED ON JUNE 30, 1992)
CIVIL NO. 89-2094-09 GRANT T. NORRIS, Plaintiff-Appellant, vs. PAUL J. FINAZZO, HOWARD E. OGDEN, HATSUO HONMA, and DOES 1-10, Defendants-Appellees.	) FIRST CIRCUIT COURT)) HONORABLE ROBERT G. KLEIN) HONORABLE PHILIP T. CHUN) HONORABLE SIMEON R. ACOBA, JR.) HONORABLE PATRICK K.S.L. YIM) HONORABLE MARCIA WALDORF)) HONORABLE SHUNICHI KIMURA)) HONORABLE BARRY KURREN) HONORABLE WENDELL K. HUDDY) Judges)

JUDGMENT ON APPEAL

Pursuant to the Memorandum Opinion of the Hawaii Supreme Court entered on February 2, 1993, the reinstated final judgment of the Circuit Court of the First Circuit entered on June 30, 1992 is vacated and this case is remanded to the Circuit Court of the First Circuit for further proceedings consistent with this Court's Memorandum Opinion filed on February 2, 1993.

DATED: Honolulu, Hawaii; February 16, 1993

BY THE COURT

/s/ Sandra H. Yasui

CLERK

APPROVED:

/s/ RONALD T. Y. MOON

JUSTICE

NO. 16263
IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL NO. 87-3984-12 GRANT T. NORRIS, Plaintiff-Appellant, vs. HAWAIIAN AIRLINES, INC., Defendant-Appellee.	) CIV. NOS. 87-3894-12 and) 89-2904-09)) APPEAL FROM THE FINAL) JUDGMENT PURSUANT TO) RULE 54(b) OF THE HAWAII) RULES OF CIVIL PROCEDURE) WITH REGARD TO COUNT I) OF THE COMPLAINT IN) CIVIL NO. 87-3894-12) (REINSTATED ON JUNE 30, 1992)
CIVIL NO. 89-2094-09 GRANT T. NORRIS, Plaintiff-Appellant, vs. PAUL J. FINAZZO, HOWARD E. OGDEN, HATSUO HONMA, and DOES 1-10, Defendants-Appellees.	) FIRST CIRCUIT COURT)) HONORABLE ROBERT G. KLEIN) HONORABLE PHILIP T. CHUN) HONORABLE SIMEON R. ACOBA, JR.) HONORABLE PATRICK K.S.L. YIM) HONORABLE MARCIA WALDORF)) HONORABLE SHUNICHI KIMURA)) HONORABLE BARRY KURREN) HONORABLE WENDELL K. HUDDY) Judges)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the foregoing document was duly served upon the following on February 05, 1993, addressed as follows:

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NO. 15022
IN THE SUPREME COURT OF THE STATE OF HAWAII

GRANT T. NORRIS,	) CIVIL NO. 89-2904-09
	)
Plaintiff-Appellant,	) APPEAL FROM THE:
TO	) (1) FINAL JUDGMENT PURSUANT
	) RULE 54(b) WITH REGARD TO (A)
vs.	) COUNT I OF THE COMPLAINT IN
	) CIVIL NO. 87-3894-12, AND (B)
PAUL J. FINAZZO;	)
HOWARD E. OGDEN;	) COUNTS I AND II OF THE
HATSUO HONMA;	) COMPLAINT IN CIVIL NO. 89-
and DOES 1-50,	) 2904-09 AND (2) ORDER DENYING
	) PLAINTIFF'S MOTION FOR
Defendants-Appellees.	) RECONSIDERATION AS TO COUNT I
	) OF (A) ORDER GRANTING IN PART
	) AND DENYING IN PART HAWAIIAN
	) AIRLINES, INC.'S MOTION TO
	) DISMISS FOR LACK OF SUBJECT
	) MATTER JURISDICTION FILED ON
	) NOVEMBER 1, 1989 AND (B) ORDER
	) GRANTING IN PART PLAINTIFF'S
	) MOTION TO STRIKE SECOND AND
	) THIRD AFFIRMATIVE DEFENSES OR
	) IN THE ALTERNATIVE FOR SUMMARY
	) JUDGMENT AS TO DEFENSE OF
	) PREEMPTION FILED ON OCTOBER
	) 27, 1989 (MOTION FILED ON
	) NOVEMBER 6, 1989)
	)
	) FIRST CIRCUIT COURT
	) HONORABLE ROBERT G. KLEIN
	) Judge
_____	)

JUDGMENT ON APPEAL

CERTIFICATE OF SERVICE

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Attorneys for Plaintiff-Appellant
GRANT T. NORRIS

NO. 15022
IN THE SUPREME COURT OF THE STATE OF HAWAII

GRANT T. NORRIS,	) CIVIL NO. 89-2904-09
	)
Plaintiff-Appellant,	) APPEAL FROM THE:
	) (1) FINAL JUDGMENT PURSUANT TO
	) RULE 54(b) WITH REGARD TO (A)
vs.	) COUNT I OF THE COMPLAINT IN
	) CIVIL NO. 87-3894-12, AND (B)
PAUL J. FINAZZO;	)
HOWARD E. OGDEN;	) COUNTS I AND II OF THE
HATSUO HONMA;	) COMPLAINT IN CIVIL NO. 89-
and DOES 1-50,	) 2904-09 AND (2) ORDER DENYING
	) PLAINTIFF'S MOTION FOR
Defendants-Appellees.	) RECONSIDERATION AS TO COUNT I
	) OF (A) ORDER GRANTING IN PART
	) AND DENYING IN PART HAWAIIAN
	) AIRLINES, INC.'S MOTION TO
	) DISMISS FOR LACK OF SUBJECT
	) MATTER JURISDICTION FILED ON
	) NOVEMBER 1, 1989 AND (B) ORDER
	) GRANTING IN PART PLAINTIFF'S
	) MOTION TO STRIKE SECOND AND
	) THIRD AFFIRMATIVE DEFENSES OR
	) IN THE ALTERNATIVE FOR SUMMARY
	) JUDGMENT AS TO DEFENSE OF
	) PREEMPTION FILED ON OCTOBER
	) 27, 1989 (MOTION FILED ON
	) NOVEMBER 6, 1989)
	)
	) FIRST CIRCUIT COURT
	) HONORABLE ROBERT G. KLEIN
	) Judge
_____	)

JUDGMENT ON APPEAL

Pursuant to the opinion of the Hawaii Supreme Court entered on December 16, 1992, the judgment of the Circuit Court of the First Circuit entered on December 5, 1990 is reversed and vacated insofar as it dismissed Counts I and II in Civil No. 89-2904-09, and this case is remanded to the Circuit Court of the First Circuit for further proceedings consistent with this Court's Opinion filed on December 16, 1992.

DATED: Honolulu, Hawaii; February 16, 1993

BY THE COURT

/s/ Sandra H. Yasui

CLERK

APPROVED:

/s/ RONALD T. Y. MOON

JUSTICE

NO. 15022
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	) NOVEMBER 6, 1989)
	)
	) FIRST CIRCUIT COURT
	) HONORABLE ROBERT G. KLEIN
	) Judge
_____	)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the foregoing document was duly served upon the following on this date by hand delivery, addressed as follows:

MARTIN ANDERSON
DAVID J. DEZZANI
KENNETH B. HIPP
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DATED: Honolulu, Hawaii; Feb. 05, 1993

/s/ Susan Oki Mollway
EDWARD deLAPPE BOYLE
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Attorneys for Plaintiff-Appellant GRANT T. NORRIS

APPENDIX D

RAILWAY LABOR ACT

Section 2, 45 U.S.C. §151a

§151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

* * * *

Section 204, 45 U.S.C §184

§184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this subchapter, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully

exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carrier either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this chapter shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provision of this subchapter, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

APPENDIX E

Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185

§185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains is principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor

organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

APPENDIX F

AGREEMENT

Between

HAWAIIAN AIRLINES, INC.

and

INTERNATIONAL
ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
(AFL-CIO)

Representing
AIRCRAFT INSPECTORS, MECHANICS,
LINE SERVICEMEN AND CLEANERS

January 16, 1987 - January 15, 1989

ARTICLE I

PURPOSE OF AGREEMENT

A. The purpose of this Agreement is, in the mutual interest of the Company and of the employees, to provide for the operation of the services of the Company under methods which will further to the fullest extent possible the safety of air transportation, the efficiency of operation, and the continuation of employment under conditions of reasonable hours, proper compensation, and reasonable working conditions. It is recognized by this Agreement to be the duty of the Company and of the employees to cooperate fully, both individually and collectively, for the advancement of that purpose.

B. No employee covered by this Agreement will be interfered with, restrained, coerced, or discriminated against by the Company, its officers, or agents because of membership in or lawful activity on behalf of the Union.

C. It is understood that wherever in this Agreement employees or classifications are referred to in the male gender, it shall be recognized as referring to both male and female employees, and that the terms and conditions hereunder apply equally to all employees regardless of sex, color, race, creed, or national origin.

* * * *

ARTICLE IV

CLASSIFICATIONS OF WORK & QUALIFICATIONS

A. For the purpose of this Agreement, the recognized classifications of work shall be as hereunder listed:

Lead Inspector
Inspector
Lead Aircraft Mechanic
Lead Mechanic
Aircraft Mechanic
Mechanic
Mechanic Helper
Lead Line Serviceman
Line Serviceman
Lead Cleaner
Cleaner

B. It is understood that it is not necessary to have each of the above classifications in each shop.

C. It is further understood that any employee covered by this Agreement may be required to do the work of a lower classification; provided, however, that when performing such work, he will be paid at the rate in which he is regularly classified. Any employee hereunder assigned by the Company to perform the duties and accept the responsibilities of a higher classification of work shall be paid the minimum established rate for said classification for the time so worked, but in no event will he be paid less than twenty-five cents (25¢) per hour above the rate he was earning immediately prior to such temporary upgrading.

D. QUALIFICATIONS

* * * *

2. Inspector

An Inspector must be capable of performing the inspection work assigned to the satisfaction of the Company. Future Inspectors must pass a practical and written examination as conducted by the Company prior to assignment.

The primary duties of an Inspector shall be the overall inspection of Company flight equipment in connection with checks, repairs, and overhauls. The work of an Inspector shall also include the inspection of materials, parts, and sub-assemblies as required, but his work shall not necessarily include the inspection of materials, parts, and sub-assemblies where such inspection is required of an Aircraft Mechanic or Mechanic to accomplish his own work. The Inspector's work may also include giving classroom instructions and training to employees of any classification. He may also be required to perform any other work related to his primary duties as Inspector. An Inspector will not supervise or direct the work of lower classified employees.

* * * *

4. Aircraft Mechanic and Mechanic

(a) Aircraft Mechanic

To qualify as an Aircraft Mechanic, an employee shall possess sufficient experience and training to perform the type of work outlined below. The work of an Aircraft Mechanic shall consist of work generally recognized as Aircraft Mechanic's work performed by the Company in or about Company shops, Maintenance Base, line service stations, Company buildings, or

equipment. Such work shall include but will not be limited to checking, dismantling, overhauling, repairing, fabricating, assembling, welding, and erecting all parts of aircraft, aircraft engines, radio equipment instruments, electrical systems, heating systems, hydraulic systems, and machine tool work in connection therewith. In addition, it may include all mechanical maintenance work when performed by the Company including, but not limited to, the dismantling, repairing, fabricating, welding, altering, and maintaining of all machinery and mechanical devices, automotive equipment, ramp equipment, buildings, hanger and field storage or dispensing equipment. Aircraft Mechanics will also perform work which is incidental to their primary duties as an Aircraft Mechanic. Aircraft Mechanics will not be required to inspect parts, subassemblies, or completed assemblies, except to the extent necessary to determine, accomplish, and approve their own work. Aircraft Mechanics must be capable of performing the work satisfactorily and must hold the valid and necessary certificates as required by law. The present ratio (to the nearest man) of licensed Aircraft Mechanics to unlicensed Aircraft Mechanics by shifts, as required on Line Maintenance as of the date of the signing of this Agreement, will not be increased except by agreement with the Local Committee. An Aircraft Mechanic may be required to sign work records in connection with the work he performed.

* * * *

ARTICLE IX

SENIORITY

* * * *

I. An employee covered by this Agreement shall lose his seniority status and his name shall be removed from seniority list under the following conditions:

1. He resigns from the Company.

2. He resigns from a classification or steps down to accept a lower classified job or part-time job for which he is the successful bidder.

3. He is displaced and refuses to exercise his seniority rights to bump laterally into another job for which he is qualified.

4. He refuses recall to a higher classified job of more than thirty (30) days anticipated duration for which he is qualified.

Under the circumstances listed in sub-paragraph 2, 3 and 4, it is understood that he will lose only such seniority he had

earned in the classification from which he resigned, stepped down, was displaced, or refused recall, provided he shall not lose this seniority if he must change his domicile in order to bump or accept recall. This will not restrict him from bidding on future vacancies in any classification.

5. He is discharged for cause.

6. He is absent from work for two (2) consecutive work days without properly notifying the Company of the reason for his absence and not then if a satisfactory reason is given for not so notifying the Company.

7. He does not inform the Company in writing, by telegraph, or by radiogram of his intention to return to service within ten (10) days of sending out notice offering him re-employment.

8. He does not return to the service of the Company on or before a date specified in the notice from the Company offering him re-employment, which date shall not be prior to fifteen (15-days after sending such notice; provided, however, that sub-paragraphs 7 and 8 of this paragraph shall not apply to offers of temporary work of less than ninety (90) consecutive days duration.

9. He is not recalled after having been laid off from the Company for a continuous period of three (3) years. The three (3) years shall be considered broken only if an employee is recalled for a period of ninety (90) or more consecutive days.

10. He accepts a bargaining unit position not covered by this Agreement and successfully completes his probationary period. This condition is effective April 1, 1980.

11. He is presently holding a bargaining unit position not covered by this Agreement and refuses a position under this Agreement to which his seniority entitles him.

* * * *

ARTICLE XV

GRIEVANCE PROCEDURE

A. In order to properly administer this Agreement and to dispose of all disputes or grievances which may arise under this Agreement or between the parties, the following procedure shall be followed:

1. The Union will be represented by not more than one (1) properly designated steward for each shift, at any activity at which employees covered by this Agreement are located.

2. The Union will be further represented by a Local Committee based in Honolulu consisting of three (3) members elected by the local membership.

3. The Company will designate a representative at each location where persons covered by this Agreement are employed who is empowered to settle all local grievances not involving change in Company policy or interpretations or changes in the intent and purpose of this Agreement.

4. The Union and the Company will at all times keep the other party advised through written notice of any change in authorized representatives.

5. The System General chairman or his representative shall be permitted at any appropriate time to enter shops and facilities of the Company for the purpose of investigating grievances and disputes arising under the Agreement after contacting the Company officer in charge and advising him of the purpose of the visit.

B. For the presentation and adjustment of disputes or grievances that may arise, the procedure will be:

1. Any employee having a complaint or grievance in connection with the terms of this Agreement may present his complaint or grievance to the steward, or Committeeman if the steward is not available, of the Union who in turn will discuss the matter with the employee's immediate supervisor and endeavor to arrive at a satisfactory adjustment of same.

2. If the steward, or committeeman if the steward is not available, or employee is not satisfied with the decision of the employee's immediate supervisor, the matter will be referred to the Local Committee in writing on a standard grievance form. The Local Committee will then take the matter up with the official in charge at the base or station for adjustment, furnishing two (2) copies of the signed complaint to the Company representative, one (1) to be retained by the Company and one (1) to be returned to the Union representative with the written decision.

3. If the Local Committee or the System Chairman is dissatisfied with the decision of the official designated in Paragraph 2 above, the matter may be appealed to the Department Head under whose jurisdiction the employee works. Further appeal, if desired, shall be to the System Board of Adjustment as provided for in Article XVI of this Agreement.

4. In step number one, the employees' immediate supervisor will give his decision within twenty-four (24) hours after discussion of the issue. If, as a result of his decision, the Union decides to appeal, notice of such appeal accompanied by the standard grievance form must be given the official in charge at the base or station within fifteen (15) days of the date of the decision rendered in step number one. Within fifteen (15) days thereafter, hearings on the appeal between appropriate representatives of the Company and Union will be held; and a written decision on the standard grievance form will be issued by the Company to the Union within ten (10) days after the final hearing has been held and the Company may request an additional seventy-two (72) hour extension to answer the second step grievance. If the second step grievance is not answered within the required time limits, the grievance will be considered sustained for the aggrieved. If the hearing officer is away from Hawaii during this period, the Company may request an extension if the Local Grievance Committee is notified. Appeals to the third step of the grievance procedure and hearings outlined above shall conform to the time limitations set forth for appeals to step number two, and the Company representative shall issue his decision in writing on the standard grievance form within fifteen (15) days after the final presentation.

C. Grievance involving wage claims must be filed promptly after the cause giving rise to the grievance is evident, and wage claims will not be valid and collectible for a period earlier than thirty (30) days prior to the date of filing a grievance or the date the grievance arose, whichever is most recent.

D. 1. Stewards will be permitted, after reporting to their foreman or supervisor, a reasonable amount of time during their working hours to investigate or present grievances. In the event it is necessary to go to another shop, they will report in with the foreman or supervisor of the other shop before contacting the affected employees. Local Committeemen will also be allowed a reasonable amount of time for this purpose. A Local Committeeman, regardless of seniority, will be assigned to whichever shift in his work unit the Union requests, provided that such shift carries a job assignment in his work classification for which he is qualified.

2. The authorized representatives of the Union shall be

permitted at any time to enter shops and facilities of the Company supervisor and advising him of the purpose of the visit.

E. Necessary hearings and investigations called by the Company shall, insofar as possible, be conducted during regular business hours, and stewards and Local Committeemen and necessary witnesses shall not suffer loss of normal pay while attending such hearings or investigation.

F. 1. No employee covered by this Agreement shall be discharged or suspended without pay from the service without a prompt, fair and impartial hearing and may be represented and assisted at such hearing by Union representatives. A member of the Local Committee will be notified within two (2) hours from the time an employee is held out of service of the reason for such action. Within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) after such verbal notification, the Union and the employee will be advised in writing of the exact charges against the employee. No later than five (5) days after the employee recieves the formal written charges against him, a hearing, as noted above, will be held at a place designated by the Company at a mutually agreed date and time to determine final disciplinary action.

2. An employee who is to be questioned by Company representatives in the investigation of an incident which may result in disciplinary action being taken against him may request a Union representative to be present as an observer. The above does not apply to inquiries of employees by supervisors in the normal course of their work.

G. Any employee dissatisfied with the action of the Company in disqualifying, suspending or discharging him may appeal from such action by filing an appeal to the third step of the grievance procedure as provided for in this Agreement, and a hearing shall be held within five (5) days of submitting such appeal. Oral and written evidence may be introduced at such hearings, and witnesses may be required to testify under oath. All decisions by Company representatives and all appeals filed by the employee or Union shall be in writing and shall conform to the time limitations set forth in the second step of the grievance procedure.

H. If as a result of any hearing or appeals therefrom it is found the suspension or discharge was not justified, the employee shall be reinstated without loss of seniority and made whole for

any loss of pay he suffered by reason of his suspension or discharge, and his personnel records shall be corrected and cleared of such charge. If a suspension rather than discharge results, the employee shall have that time he has been held out of service without pay credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this Agreement, the maximum liability of the Company shall be limited to the amount of normal wages he would have earned in the service of the company had he not been discharged or suspended.

I. When it is mutually agreed that a recording is to be made or a stenographic report is to be taken by a public stenographer of any investigation or hearing provided for in this Agreement, the cost will be borne equally by both parties to the dispute. When it is not mutually agreed that a stenographic report of the proceedings be taken by a public stenographer, the stenographic record of any such investigation or hearing may be taken by either of the parties to the dispute. A copy of such stenographic record will be furnished to the other party to the dispute upon request at pro rata cost. The cost of any additional copies requested by either party shall be borne by the party requesting them, whether the stenographic record is taken by mutual agreement or otherwise.

J. No steward or Local Committee member shall serve in such capacity while he is on leave of absence.

K. Any grievance which the Company may have against the Union at any place on the system shall be presented by the Company's Chief Operating Officer or his designee to the System General Chairman. In the event the matter is not satisfactorily adjusted within two (2) weeks after such presentation, it may be appealed to the System Board of Adjustment provided for herein.

L. All time limits for appeals and decisions will be exclusive of Saturdays, Sundays, and holidays.

ARTICLE XVI
SYSTEM BOARD OF ADJUSTMENT

A. In compliance with Section 204, Title II, of the Railway Labor Act, as amended, there is hereby established a System Board of Adjustment for the purpose of adjusting disputes or grievances which may arise under the terms of this Agreement and which are properly submitted to it after all steps for settling disputes and grievances as set forth in Article XV have been exhausted.

B. Unless otherwise agreed to by the Company and the Union, the System Board of Adjustment shall consist of three (3) members, one (1) appointed by the Company (hereinafter referred to as the Company Member), one (1) appointed by the Union (hereinafter referred to as the Union Member), and for each dispute one (1) member selected from a panel of potential referees in a manner agreeable to the Company and the Union (hereinafter referred to as the Neutral Member). The Company and the Union Member shall serve until their successors are duly appointed.

C. The Board shall have exclusive jurisdiction over disputes between any employee covered by this Agreement and the Company and between the Company and the Union, growing out of grievances concerning disciplinary action, rules, rates of pay, or working conditions covered by this Agreement, or any amendment or supplement thereto, or out of the interpretation or application of any terms of this Agreement, or any amendment or supplement thereto. The jurisdiction of the Board shall not extend to proposed changes in rules, basic rates of compensation, or working conditions covered by this Agreement or any amendments thereto. The Board shall not have jurisdiction or power to add to or subtract from this Agreement or any amendments thereto or any agreement between the parties.

D. The Board shall consider any dispute properly submitted to it by any employee covered by this Agreement, by the System General Chairman of the Union, or by the Chief Operating Officer of the Company when such dispute has not been previously settled in accordance with the terms provided for in this Agreement, provided that the dispute is filed with the Board within forty (40) calendar days after the procedure provided for in this Agreement has been exhausted. If a dispute is not filed within such time the action of the Company or Union shall become final and binding. The date the submission is received by the Board shall determine the order of hearing, unless the parties mutually agree otherwise.

E. The Neutral Member of the Board shall preside at meetings and hearings of the Board and shall be designated as Chairman of the System Board of Adjustment. It shall be the responsibility of the Chairman to guide the parties in the presentation of testimony, exhibits, and argument at hearings to the end that a fair, prompt, and orderly hearing of the dispute is afforded.

F. The Board shall meet in the city where the General Offices of Hawaiian Airlines, Inc., are maintained (unless a different place of meeting is agreed upon by the parties, with the consent of the Neutral).

G. All disputes properly referred to the Board for consideration shall be addressed to the Company Member and the Union Member jointly. The submissions of the dispute to the Board shall include:

1. The question or questions at issue.

2. A statement of the specific Agreement provisions which are claimed to have been violated.

3. A statement of all facts relating to the dispute which the appealing party asserts exist and alleges can be proved and which support its position.

4. The full position of the appealing party. A copy of the initial submission shall be served on the other party or parties.

H. Upon the filing of the submission with the Company Member and Union Member, the Company and Union shall within five (5) days select a Neutral Member to sit with the Board in the consideration and disposition of the case and shall advise the appealing party and interested parties of the name and address of the Neutral Member.

I. Within thirty (30) days after receipt of the appealing party's submission, the other party to the dispute shall file a Statement of Position with the Company Member, the Union Member, and the party or parties involved which shall include:

1. If the parties are unable to agree on the question or questions at issue, the other party will state the question or questions at issue.

2. All facts relating to the dispute which the party asserts exist and alleges can be proved and which support its position.

3. The party's full position.

J. Upon the filing of the Statement of Position, the appealing party shall forward a copy of the submission to the Neutral Member, and the other party to the dispute shall file with the Neutral Member a copy of the Statement of Position. All subsequent documents to be filed with the Board shall be addressed to all three members of the Board.

K. Within fifteen (15) days after the date the Statement of Position is filed with the Company Member and the Union

Member, the parties shall advise the Board of the facts on which they desire the present evidence during the hearing of the dispute before the Board unless they mutually agree not to present any evidence or oral argument. Each party shall have the opportunity at the hearing to present evidence on the facts on which the other party presents evidence. The Neutral Member may also advise the parties the facts on which he desires to have evidence. If any party does not desire to present evidence or oral argument, that party shall so advise the other party or parties and the Board within the time limits specified in this paragraph.

L. 1. As soon as the parties and the Neutral Member (Chairman) have been advised of the facts on which evidence will be presented, the Chairman shall set a date for hearing which shall be mutually satisfactory with the Union and Company Members of the Board and shall be within thirty (30) days of said date, unless the Chairman is notified that the Company and the Union have agreed to a mutually satisfactory later date. The Chairman shall give the necessary notices in writing of such hearing to the parties. The decision of the Board shall be rendered within thirty (30) days after the close of the hearing. If neither party nor the Chairman requests evidence to be presented at the hearing, hearing shall be waived except where any of the parties or the Chairman requests a hearing for the purpose of oral argument.

2. In the event neither party desires to present evidence or oral argument at the hearing, the Chairman shall be so advised within the time limits specific in Paragraph K of this Article. If there is to be no hearing for presentation of evidence or oral argument, the Chairman shall set a date for an executive session of the Board during or after which a decision shall be rendered, but in any event said decision shall be rendered within forty (40) days of the date the Chairman was advised that no evidence or oral argument would be presented.

M. Employees covered by this Agreement may be represented at Board hearings by such person or persons as they may choose and designate, and the Company may be represented by such person or persons as it may choose and designate. Evidence may be presented either orally or in writing, or both. All witnesses testifying orally or by deposition shall do so under oath. On request of individual members of the Board, the Board may, by majority vote, or shall at the request of either the Union Member or the

Company member thereof, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute or by either party or by the Board itself. The number of employee witnesses summoned at any one time shall not be greater than the number which can be spared from the operation without interference with the services of the Company.

N. A majority vote of all members of the Board shall be competent to make a decision.

O. Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties to the dispute and the parties to this Agreement.

P. Nothing herein shall be construed to limit, restrict, or abridge the rights or privileges accorded either to the employees or to the Company or to their duly accredited representatives under the provisions of the Railway Labor Act, as amended.

Q. Each of the parties hereto will assume the compensation, travel expense, and other expenses of the Board Member selected by it and one-half (½) of the compensation, travel expense, and other expenses of the Neutral Member.

R. Each of the parties hereto will assume the compensation, travel expense, and other expenses of the witnesses called or summoned by it. Witnesses who are employees of the Company shall receive free contingent air transportation over the lines of the Company from the point of duty or assignment to the point at which they must appear as witnesses and return, to the extent permitted by law.

S. The Company Member and the Union Member, acting jointly, shall have the authority to incur such other expenses as in their judgment may be deemed necessary for the proper conduct of the business of the Board, and such expenses shall be borne one-half (½) by each of the parties hereto. Board Members who are employees of the Company shall be granted necessary leaves of absence for the performance of their duties as Board Members. So far as space is available, the Company and the Union Board Members shall be furnished free transportation over the lines of the Company for the purpose of attending meetings of the Board, to the extent permitted by law.

T. It is understood and agreed that each and every Board member shall be free to discharge his duty in an independent manner, without fear that his individual relations with the Company or

with the Union may be affected in any manner by any action taken by him in good faith in his capacity as a Board Member.

U. A stenographic report will not be made on each case on which a hearing is held unless the parties mutually agree otherwise.

V. The Chairman's copy of all transcripts and/or all records of cases will be filed at the conclusion of each case in a place to be provided by the Company and will be accessible to Board Members and to the parties.

ARTICLE XVII

SAFETY AND HEALTH

A. Employees entering the service of the Company may be required to take a physical examination specified by the Company. The cost of such examination will be paid by the Company. Thereafter the Company may request an employee to submit to further physical examinations during the course of his employment or recall to service after a layoff due to reduction in force. If it becomes necessary to hold an employee out of service due to his physical condition, the Union will, on the employee's request, be fully informed of the circumstances, and every effort will be made to return the employee to service at the earliest possible date. The cost of such further examination shall be paid by the Company.

B. The Company shall institute and maintain all reasonable and necessary precautions for safeguarding the health and safety of its employees. Both the Company and the Union recognize their respective obligations to assist in the prevention, correction, and elimination of all hazardous and unhealthy working conditions and practices.

C. The Company hereby agrees to maintain safe, sanitary, and healthful working conditions in all shops and facilities and to maintain on all shifts emergency first aid equipment at a first aid station to take care of its employees in case of accident or illness. It is understood that this does not require the Company to maintain a nurse or doctor on the property, but the Company will designate a doctor to be called in an emergency.

D. The Company agrees to furnish good drinking water and sanitary fountains; the floors of the toilets and washrooms will be kept in good repair and in clean, dry, sanitary condition. Employees will cooperate in maintaining the foregoing conditions.

Shops and washrooms will be lighted in the best manner possible, consistent with the source of light available. Individual lockers will be provided for all employees where space and lockers are available. Every effort will be made as early as possible to provide space and lockers for all employees. Lockers will be made available to all employees provided Company equipment or clothing necessary in the performance of their job.

E. 1. In order to eliminate as far as possible accidents and illness, a safety committee will be established at each point on the system where employees hereunder are based, composed of a member from each department and shop. The safety committee will meet at least once a month with management in regard to safety rules, regulations and recommendations. The Union will appoint one (1) member to each neighbor island safety committee. Insofar as practical, all matters of occupational safety and health are normally to be handled directly between the designated Union safety representative(s) or committee and the designated management safety representative(s). Discussions between these parties will be directed toward the rapid and efficient solution of safety and health problems.

2. The duty of the safety committee will be to see that all applicable State and municipal safety and sanitary regulations are complied with, as well as to make recommendations for the maintenance of proper standards.

3. This committee shall receive and investigate complaints regarding unsafe and unsanitary working conditions and make recommendations concerning such complaints. The Union safety committee member(s) or representative(s) shall be allowed with permission from the immediate supervisor a reasonable amount of time during working hours without loss of pay for these purposes.

F. Proper and modern safety devices shall be provided for all employees working in hazardous or unsanitary work, such devices to be furnished by the Company. Employees will not be required to use unsafe tools or equipment or perform work that involves an imminent danger to his or any other employee's health or physical safety once a complaint has been lodged with the immediate supervisor. However, employees will be expected to report unsafe tools or equipment. An employee's refusal to perform work which is in violation of established health and safety rules, or any

local, state or federal health and safety law shall not warrant disciplinary action.

G. The Company shall make available at its expense all necessary safety devices for employees working on hazardous or unsanitary work, and employees will be required to use or wear such devices in performing such work.

H. The Company will furnish protective apparel, equipment and devices to all employees required to work with acids or chemicals that are injurious to clothing or employees.

The Company will make available at its expense appropriate aprons, gloves, and shoes for use of all employees while required to work with acids and chemicals that are injurious to clothing while such employees are engaged in such activities, and employees will be required to wear such equipment.

I. Employees injured or who become ill because of occupational hazards while at work shall be given medical attention as promptly as reasonably practicable. Employees will not be refused permission to return to work because they have not signed releases of liability pending the disposition or settlement of any claims which they may have for compensation arising out of such sickness or injury.

J. Suitable rain repellent garments and boots shall be kept available at all shops and service stations for use of employees covered by this Agreement when they are required to work outside in the rain.

K. The Company will make available at its expense, ear muffs for employees working on the line.

L. The Company will make available, at its expense, safety goggles where required and will also provide replacement of safety prescription lenses and frames broken in the act of work when worn.

M. Employees required to have x-ray examinations will be sent, if possible, during their working hours at Company expense. Time spent outside normal working hours obtaining this examination will be paid at straight time.

N. Employees will be required to wear safety equipment designated and provided for their job. Failure to wear such equipment shall be a basis for disciplinary action.

* * * *

ARTICLE XXIII

EFFECTIVE DATE AND DURATION

This Agreement, as amended, shall become effective January 16, 1987, and shall continue in full force and effect through January 15, 1989, and shall renew itself without change unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, sixty (60) days prior to January 15, 1989, or in accordance with the provisions of Paragraph 8, Article III, of this Agreement, by either party hereto.

APPENDIX G

AUGUST 03, 2987

BASE MAINTENANCE & ENGINEERING
JULY 31, 1987
SUSPENSION HEARING

A HEARING WAS HELD IN THE BASE MAINTENANCE OFFICE JULY 31, 1987
AT 10:00 A.M.

REPRESENTING THE UNION:	F. BAPTIST
REPRESENTING THE COMPANY:	J. CULAHARA
SUSPENDED EMPLOYEE:	G. NORRIS - DATE OF HIRE: FEBRUARY 2, 1987
COMPANY OBSERVER:	C. ROBINSON

THE HEARING OFFICER PRIOR TO THE START OF THIS HEARING EMPHASIZED THE EMPLOYEE REQUESTED THE LATE SCHEDULED TIME AS STATED ON THE LETTER DATE JULY 15, 1987 NOTIFIED TO HIM.

QUESTION AT ISSUED:	EMPLOYEE'S REFUSAL TO SIGN WORK RECORDS FOR WORK PERFORMED BY HIM; SUBSEQUENTLY, SUSPENDED FOR INSUBORDINATION AFTER A DIRECT ORDER WAS GIVEN TO DO SO.
POSITION OF UNION:	EMPLOYEE REFUSAL TO SIGN COMPANY WORK RECORD BASED ON; HE FELT IT WAS UNSAFE FOR WORK PERFORMED.

POSITION OF COMPANY: THE COMPANY IS RESPONSIBLE FOR THE AIRWORTHINESS OF IT'S AIRCRAFT AND THE PERFORMANCE OF MAINTENANCE IN ACCORDANCE WITH IT'S MANUAL, WHICH MUST ENSURE COMPLIANCE WITH THE FAR'S. ALSO, COMPETENT PERSONNEL, MR. HENRY WONG, QUALITY CONTROL INSPECTOR, WHO IS TECHNICALLY QUALIFIED TO ANALYZE, JUDGE THE MERIT OF EACH ITEM AND MAKE THE DECISION WHETHER OR NOT TO SIGN THE ITEM OFF AS AIRWORTHY.

THE BASE MAINTENANCE LINE MANAGER, MR. JUSTING CULAHARA, PERSONALLY OBSERVES THIS WORK BEING DONE TO THE EXTENT NECESSARY TO INSURE THAT IT IS BEING DONE PROPERLY. HE IS READILY AVAILABLE IN PERSON FOR CONSULTATION. HE SEES ALL AIRCRAFT IN A CONDITION SATISFACTORY TO INSPECTION SECTION PRIOR TO RELEASE FOR FLIGHT.

IN THIS CASE, THE DECISION IN SIGNING A WORK SHEET SIGNIFY ONLY IT IS COVERED BY HIS SIGNATURE. THIS WAS THE ONLY REQUISITE IN THIS CASE. A DIRECT ORDER WAS GIVEN AND HIS REFUSAL TO COMPLY BROUGHT ABOUT

THIS UNHAPPY SITUATION. MANAGEMENT HAS NEVER MANDATED FOR A "SIGN OFF" FOR WORK NOT DONE BY AN INDIVIDUAL.

DECISION: MR. GRANT NORRIS TERMINATED AS OF THIS DAY, AUGUST 3, 1987, FOR INSUBORDINATION.

/s/ NORMAN MATSUZAKI

NORMAN MATSUZAKI
ASSISTANT DIRECTOR OF BASE MAINTENANCE
HEARING OFFICER

NM:hpa

cc: GRANT NORRIS
IRD
A.P. WELLS
H.E. OGDEN
C. ROBINSON
H. HONMA
IAM

APPENDIX H

September 10, 1987

Mr. Grant T. Norris
1125-A 2nd Avenue, #4
Honolulu, HI 96816

Dear Mr. Norris:

I have reviewed your case file very carefully and, as the next appropriate individual in the chain of command, I have decided to mitigate the punishment imposed on you from discharge to suspension without pay for the period August 3, 1987 to September 15, 1987.

You are to report to duty on September 15, 1987 at 1930 hours.

This action being taken by me should not be interpreted by you as an indication that the Company condones your conduct. You are hereby warned that any further instance of failure to perform your duties in a responsible manner will result in consideration of more severe disciplinary action to include discharge.

Very truly yours,

/s/ HOWARD E. OGDEN

Howard E. Ogden
Vice President
Maintenance and Engineering

cc: Personnel
Norman Matsuzaki
Samson Poomaihealani/IAM